National Energy Board | Office national de l'énergie

Reasons for Decision

TransCanada PipeLines Limited

GH-5-2008

February 2009

Jurisdiction and Facilities

Canada

National Energy Board

Reasons for Decision

In the Matter of

TransCanada PipeLines Limited

Application dated 17 June 2008 by TransCanada PipeLines Limited for a Declaratory Order under subsection 12(2) of the *National Energy Board Act* that the TransCanada Alberta System is within federal jurisdiction and subject to regulation by the National Energy Board and for a Certificate of Public Convenience and Necessity under section 52 of the *National Energy Board Act* and related approvals for the TransCanada Alberta System.

GH-5-2008

February 2009

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Abbreviations

AAPL	Alberta Association of Pipeline Landowners
ABSA	Alberta Boiler Safety Authority
ADOE	Alberta Department of Energy
AIV	alternative integrity validation
Alberta System	TransCanada Alberta System
Alliance	Alliance Pipeline Ltd.
AUC	Alberta Utilities Commission
Bcf	billion cubic feet
Bcf/d	billion cubic feet per day
Board or NEB	National Energy Board
BP Canada	BP Canada Energy Company
CAPLA	Canadian Alliance of Pipeline Landowners' Association
CEA Act	*Canadian Environment Assessment Act*
Certificate	certificate of public convenience and necessity
cm	centimetre
CSA	Canadian Standards Association
CSA Z662	latest applicable version of the CSA standard Z662, *Oil and Gas Pipeline Systems*, as amended from time to time
EPP	Environmental Protection Plan
ESR	Environmental Screening Report
Foothills System	Foothills Pipe Lines Ltd. large diameter natural gas transmission system extending from central Alberta to the United States border near Monchy, Saskatchewan and Kingsgate, British Columbia. Foothills is owned by TransCanada.
GIS	geographical information system
HS&E	Health Safety and Environment
IPA	Integrated Public Awareness

km	kilometre
m	metre
Mainline	TransCanada PipeLines Limited large diameter natural gas pipeline transmission system extending from a point just inside the Alberta border to the Québec/Vermont border with various connections to domestic pipelines and at the international border
mm	millimetre
NCC	North Central Corridor
NEB Act	*National Energy Board Act*
NGTL	NOVA Gas Transmission Ltd.
NPS	nominal pipe size
NRCan	Natural Resources Canada
OPR-99	*Onshore Pipeline Regulations, 1999*
Provident	Provident Energy Limited
RoW	right-of-way
Suncor	Suncor Energy Inc. and Suncor Energy Marketing Inc. (collectively Suncor)
Syncrude	Syncrude Canada Ltd.
Tcf	trillion cubic feet
TransCanada	TransCanada PipeLines Limited
UCA	Office of the Utilities Consumer Advocate
WEG/Tenaska	Western Export Group and Tenaska Marketing Canada

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF an application dated 17 June 2008 by TransCanada PipeLines Limited for a Declaratory Order under subsection 12(2) of the *National Energy Board Act* that the TransCanada Alberta System is within federal jurisdiction and subject to regulation by the National Energy Board and for a Certificate of Public Convenience and Necessity and related approvals for TransCanada's Alberta System under section 52 of the *National Energy Board Act*, filed with the National Energy Board under File No. OF-Fac-Gas-T211-2008-01 01; and

AND IN THE MATTER OF National Energy Board Hearing Order GH-5-2008 dated 18 July 2008;

HEARD in Calgary, Alberta on 18, 19, and 20 November 2008 with respect to the jurisdictional matters;

BEFORE:

G. Caron	Presiding Member
S. Leggett	Member
R.R. George	Member
K.M. Bateman	Member
G. Habib	Member

AND HEARD in Calgary, Alberta on 19, 21, 24, 25, 26, 27 and 28 November 2008 with respect to the facilities matters;

BEFORE:

S. Leggett	Presiding Member
K.M. Bateman	Member
G. Habib	Member

Appearance	On behalf of	Witnesses
Applicant		
C.K. Yates, Q.C.	TransCanada PipeLines Limited	S. Clark
P.M. Keys		S. Edmond
W.M. Moreland		K. Etherington Piro M. Feldman R. Kendel A. Lees D. Schultz

Associations

P.G. Vogel J.D. Goudy	Alberta Association of Pipeline Landowners (AAPL) and the Canadian Alliance of Pipeline Landowners' Associations (CAPLA)
N.J. Schultz	Canadian Association of Petroleum Producers

Companies

L. Keough K. Drozdowski	Alliance Pipeline Ltd.
D.A. Holgate	BP Canada Energy Company
A.R. Avery	ConocoPhillips Canada Limited
D. Davies	EnCana Corporation
R.R. Moore	Imperial Oil Resources & ExxonMobil Canada
A.S. Hollingworth, Q.C. H. Tanaka	Inter Pipeline Fund
J.H. Smellie J.R. Cusano	NOVA Chemicals Corporation
C.K. Yates, Q.C. P.M. Keys W.M. Moreland	NOVA Gas Transmission Ltd.
R. Kolber	Petro-Canada and Petro-Canada Oil Sands Inc.
L.E. Smith, Q.C.	Provident Energy Limited
R. Gall	Shell Canada Energy
B.J. Roth	Suncor Energy Inc. and Suncor Energy Marketing Inc.
L.K. Estep	Syncrude Canada Ltd.

Groups

F.J. Weisberg	Western Export Group and Tenaska Marketing Canada

Governments

C.J.C. Page C. King	Alberta Department of Energy
C.W. Sanderson, Q.C.	Government of the Northwest Territories
A.M. Kemshaw	Department of Industry, Tourism and Investment
M.P. Stauft	Office of the Utilities Consumer Advocate
A. Hudson M. Haug	National Energy Board

Introduction

On 17 June 2008 TransCanada PipeLines Limited (TransCanada) applied to the National Energy Board (NEB or Board) to effect recognition that the TransCanada Alberta System (Alberta System) is by law properly within Canadian federal jurisdiction and subject to regulation by the Board as part of a single federal undertaking. Specifically TransCanada requested that the Board:

(a) pursuant to subsection 12(2) of the *National Energy Board Act* (NEB Act), determine and issue a declaratory order that the Alberta System is properly within federal jurisdiction and subject to regulation by the NEB;

(b) pursuant to section 57 of the *Federal Courts Act*, issue a Notice of Constitutional Question in respect of the requested declaratory order[1];

(c) pursuant to section 52 of the NEB Act, issue a certificate of public convenience and necessity (Certificate) to NOVA Gas Transmission Ltd. (NGTL) in respect of the Alberta System;

(d) pursuant to subsection 19(1) of the NEB Act, direct that the Board determination and declaratory order made in (a) above shall come into force upon the issuance of the Certificate to NGTL in respect of the Alberta System;

(e) issue any ancillary approvals to NGTL that are required and that the NEB deems necessary to effect the transition of the Alberta System from provincial regulation to federal regulation by the NEB; and

(f) authorize such further and other relief as TransCanada may subsequently request or that the Board may consider appropriate.

TransCanada proposed that its Application be considered in two sequential phases. Phase I (Jurisdiction Phase) would consider the constitutional question of whether the Alberta System is properly within federal jurisdiction and subject to regulation by the NEB. Phase II (Certificate and Implementation Phase) would consider whether the Alberta System is required by the present and future public convenience and necessity and, if so, the ancillary approvals required to effect the transition to federal regulation. Phase II would not proceed unless and until the Board determines in Phase I that it has jurisdiction over the Alberta System.

The Alberta System is an existing natural gas pipeline system comprising in excess of 23 500 km of pipeline, associated compression and other facilities located within Alberta (Figure i). In 2007, it carried in excess of 10 Bcf (283 million m^3) of natural gas per day. This accounts for approximately 68 percent of the production from Western Canada, or about 16 percent of total North American production. Gas flowing through the Alberta System moves through connecting

---

1 The Board issued this notice in the cover letter to Hearing Order GH-5-2008, wherein it directed that TransCanada serve a copy of the letter and Hearing Order on, among others, the Attorneys General in Canada and that such service would constitute notice under section 57 of the *Federal Courts Act*.

pipelines to markets in Western and Central Canada, and the United States West, Mid-West and North East.

On 18 July 2008, the Board issued Hearing Order GH-5-2008 setting out its hearing process for TransCanada's application. The hearing proceeded in two concurrent streams. In the first, the Jurisdiction Process, the Board sought written submissions from parties on whether or not the Alberta System was subject to federal jurisdiction. In the second stream, the Facilities Process, the Board addressed TransCanada's request for a Certificate under s.52 of the NEB Act.

On 7 August 2008, the Board issued filing guidance on the initial information which TransCanada was expected to provide in support of its application. The rationale for this filing guidance was the Board's decision to hold a single phase process rather than the two-phase hearing requested by TransCanada. The Board also advised that, if the information was not readily available, TransCanada was expected to include some indication about how the information would be compiled and when it would be available.

On 15 August 2008, the Alberta Department of Energy (ADOE) requested that the Board amend its hearing process to allow for information requests and cross examination in the Jurisdiction Process and a change to the timing of final jurisdictional submissions. A number of parties also raised questions in their interventions about the List of Issues to be examined and the scope of facilities to be considered in the hearing. The Board sought input on these issues by letter dated 28 August 2008. As a result of submissions provided, on 24 September 2008 the Board confirmed the scope of the hearing and the list of issues, and amended Hearing Order GH-5-2008 to include an information request and cross examination process as recommended by ADOE. The Board also allowed parties to make supplemental final argument at the conclusion of the jurisdiction steam in addition to the written submission provided for in the original hearing order.

The List of Issues that the Board considered in this hearing was:

1. Whether the Alberta System is within Canadian federal jurisdiction and subject to regulation by the Board.

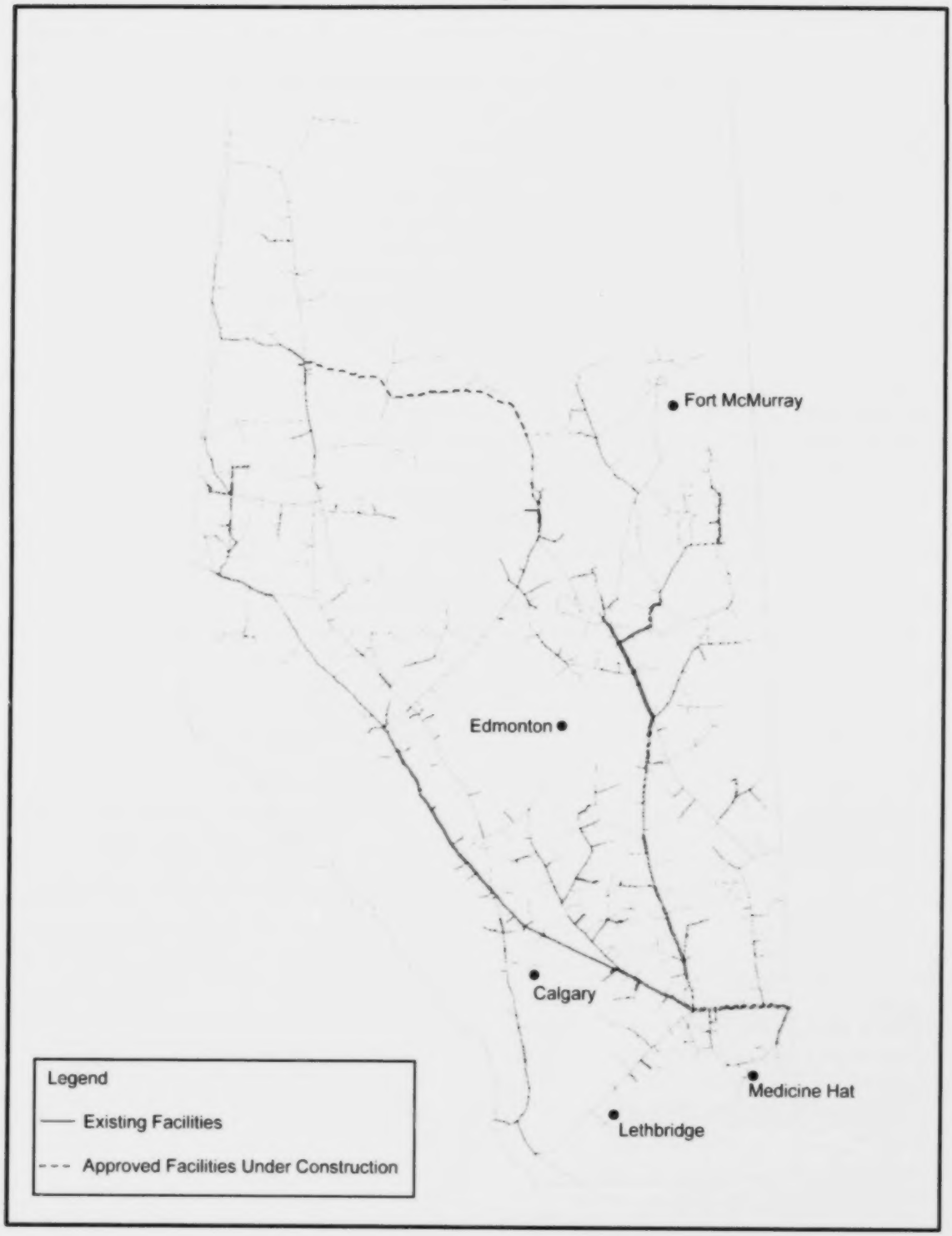
If the Alberta System is found to be within Canadian federal jurisdiction, in order to determine if a Certificate should be issued:

2. The potential environmental and socio-economic effects of the operation of the facilities, including those factors outlined in subsection 16(1) of the CEA Act.

3. The terms and conditions to be included in any approval the Board may issue.

Thirty eight parties registered as intervenors in GH-5-2008. An oral hearing was held between 18 and 28 November 2008 in Calgary, Alberta. The Jurisdiction Process cross examination and supplemental argument was heard by a five-member panel on 18-20 November 2008. The Facilities Process was heard before a three-member panel on 19, 21, and 24-28 November 2008.

Figure I
Alberta System



Part I

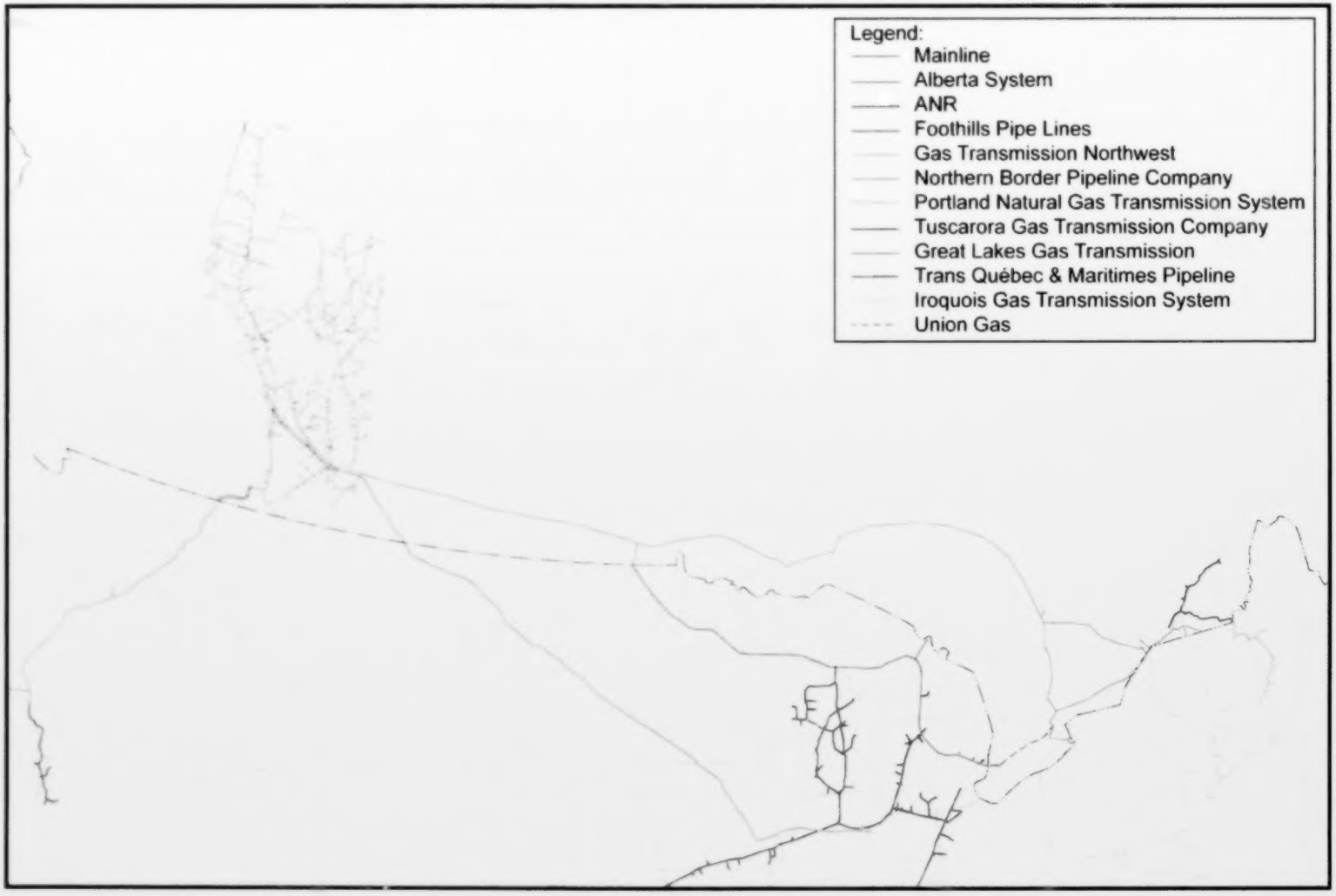
Chapter 1

TransCanada's Application Regarding Jurisdiction

TransCanada provided evidence of the following facts, which were not challenged by any party:

- The Alberta System is completely within the province of Alberta and is currently regulated by the Alberta Utilities Commission (AUC). The TransCanada Mainline (Mainline) and the TransCanada Foothills System (Foothills System) are both federal pipelines regulated by the NEB. See map in Figure 2-1.
- The Alberta System transports in excess of 10 Bcf of natural gas per day. Total 2007 throughput was in excess of 4.0 Tcf. The Alberta System transports approximately 68 percent of the natural gas produced in Western Canada (or 16 percent of total North American production) and delivers approximately 80 percent of its volumes to pipelines removing the gas from Alberta.
- The Mainline is a large diameter natural gas pipeline transmission system (approximately 15 000 km) extending from a point just inside the Alberta border through Saskatchewan, Manitoba, Ontario and into Québec, with various connections to domestic pipelines and at the international border. It serves markets in the Canadian provinces of Saskatchewan, Manitoba, Ontario and Québec, and in the United States Midwest and Northeast. The average investment base of the TransCanada Mainline was $7.292 billion in 2007.
- Total 2007 throughput of the Mainline was approximately 3.24 Tcf. Average daily throughput was approximately 8.9 Bcf. In 2007, approximately 87% of throughput on the Prairies Section of the TransCanada Mainline System was delivered from the TransCanada Alberta System.
- The Foothills System is a large-diameter natural gas pipeline system, approximately 1240 km in length, that extends from central Alberta (near Caroline) to the United States border near Monchy, Saskatchewan, and to Kingsgate, British Columbia. It serves markets in the United States Midwest, Pacific Northwest, California and Nevada. The average investment base of the Foothills System was $794 million in 2007.
- In 2007, the Foothills System moved approximately 4.0 Bcf/d and a total of 1.45 Tcf. The Alberta System connects with the Foothills System at points within Alberta near Caroline, Crowsnest and McNeill. Virtually all Foothills System volumes were received from the Alberta System.
- The Alberta System also connects with various gas processing and other gas pipeline supply facilities along the Alberta borders that are owned and operated by various companies. Approximately 7.5 percent of the gas transported by the Alberta System within Alberta originates outside the Alberta borders.
- The Alberta System is functionally and operationally integrated with the Mainline and the Foothills System. All three pipeline facilities are managed and operated together by TransCanada as a single enterprise.

Figure 1-1
Pipeline Network Connecting to the Alberta System



- The overall management of all three facilities is conducted by directors, officers and employees of TransCanada. Neither NGTL, the owner of the Alberta System, nor the corporations that own the Foothills System have any employees. The head office functions of all three are conducted by TransCanada from its offices in Calgary, Alberta. Thus all three pipelines share common management, control and direction.
- The Mainline is owned by TransCanada. The Foothills System and the Alberta System are owned by wholly owned subsidiaries of TransCanada. All three therefore share common ownership.
- The purpose and object of the enterprise that uses the three TransCanada works is the transportation of natural gas destined for markets within Canada and in the United States.

TransCanada's argument:

- TransCanada's interprovincial undertaking is the transportation of natural gas to markets within Canada and the United States. TransCanada uses the works of the Alberta System, the Mainline and the Foothills System to carry on this undertaking.
- It is not relevant that the Alberta System may perform a gathering function nor is the fact that the Alberta System was initially established for a provincial purpose.
- A federal work or undertaking is one that crosses a provincial or national boundary. The law, as set out in a number of cases[2] and the *Constitution Act, 1867*[3], is that a pipeline, that does not itself cross a provincial or national boundary, will be within federal jurisdiction and subject to regulation by the NEB if it is part of a federal work or undertaking or it is integral to a federal work or undertaking. A pipeline that is within federal jurisdiction is subject to regulation by the Board because of the definition of "pipeline" in the *NEB Act*[4].
- There is no single comprehensive test to determine if a pipeline is under federal or provincial jurisdiction. Jurisdiction depends on the specific facts, known as constitutional facts, of each situation. The decision is to be made on existing facts and not on what may happen in the future.
- The primary factor to be considered in determining if a pipeline is part of or integral to a federal pipeline is functional integration and common management, control and direction. Although not determinative, other factors that can be considered include:
  - common ownership,
  - physical connection, and
  - common purpose and object.
- If a pipeline that would otherwise be intraprovincial is essential, rather than merely beneficial, to a federal pipeline it will be considered to be integral to that pipeline.

---

2 *United Transportation Union et al. v. Central Western Railway Corporation*, [1990] 3 S.C.R. 1112 ("Central Western Railway"), per Dickson, C.J.C. at 1124-1125; *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322.

3 See sections 91 and 92.

4 See section 2.

- Based on these facts, the Alberta System is part of or integral to the single federal undertaking for the transportation of natural gas. Alternatively, it is essential to that federal undertaking.

Accordingly, TransCanada requested the following:

- The NEB should issue a declaratory order that the Alberta System is part of or integral to a federal work and undertaking. Pursuant to section 19 (1) of the NEB Act, that order should state that it comes into force on the date that any Certificate for the Alberta System comes into force.
- In order to avoid uncertainty, the jurisdiction decision and the decision regarding certification should be released at the same time.
- If the Board were to declare that it has jurisdiction before a Certificate is in effect, TransCanada would be in violation of paragraph 30(1)(a) of the NEB Act which requires that a company have a Certificate in order to operate a pipeline. TransCanada would not be prepared to operate in contravention of the NEB Act.

The Alberta Department of Energy (ADOE)

ADOE was the only party to argue that the Alberta System continues to be under provincial jurisdiction and stressed its "provincial character." ADOE said that the Alberta System was neither part of, nor integral to, a federal work and undertaking but that this could soon change.

ADOE indicated that TransCanada would be applying for an extension of the Alberta System into British Columbia. If this application is approved, the Alberta System would cross a border and therefore become a federal work and undertaking. ADOE noted that the Government of Alberta has said that it is not opposed to the Alberta System becoming federally regulated.

ADOE argued that something more than functional integration and common management, control and direction is required for the Alberta System to become federal. Although this could be done in other ways, ADOE said that the most likely way, short of itself crossing a border, would be if the Alberta System were to be exclusively dedicated to the Mainline and Foothills System. Since this was not the case, the Alberta System remains provincial.

According to ADOE, a requirement for "exclusive dedication" follows from *Westcoast* and two cases referred to in *Westcoast: Dome Petroleum Ltd. v. National Energy Board*[5] *(Dome)* and *Canadian Pacific Railway Co. v. Attorney-General for British Columbia*[6] *(Empress Hotel)*. In all three cases facilities not normally associated with the core federal undertaking were being considered for federal jurisdiction. In *Westcoast* and *Dome* the core federal undertakings were pipelines and the facilities in issue were processing plants and storage caverns respectively. Both would normally be under provincial regulation. But since the processing plants were exclusively dedicated to the federally-regulated Westcoast Mainline and the storage caverns were exclusively dedicated to the federally-regulated Cochin pipeline, both were considered to be part of those pipelines and therefore under federal regulation. In *Empress*, the issue was

5 (1987), 73 N.R. 135

6 [1950] A.C. 122 (P.C.)

whether a hotel was part of a federally-regulated railroad because it served travelers from the railroad. Since the hotel also accepted travelers who did not arrive via the railroad, it was not exclusively dedicated to the railroad and therefore was not part of the railroad nor under federal jurisdiction.

ADOE said that since the Alberta System is not exclusively dedicated to the Mainline and the Foothills System, it should not come within the definition of pipeline in the NEB Act and therefore should remain under provincial jurisdiction.

BP Canada Energy Company (BP Canada)

BP Canada agreed that, on the specific facts in this case taken together, TransCanada has made a compelling case for the proposition that the Alberta System is a federal undertaking and is properly subject to federal regulation. To address commercial uncertainty, BP Canada urged the Board to issue its decision on jurisdiction as quickly as reasonably possible.

Inter Pipeline Fund (IPF)

IPF agreed that the Alberta System is integral to, and possibly part of, TransCanada's interprovincial undertaking and therefore is under federal jurisdiction and subject to regulation by the NEB. IPF concurred with TransCanada's request that the jurisdiction decision come into effect on the effect date of a Certificate provided that there is no long delay.

Provident Energy Limited (Provident)

Provident agreed with TransCanada that the Alberta System is subject to federal jurisdiction but took the position that the Alberta System became a federal work and undertaking upon TransCanada filing its application with the Board on 17 June 2008. This position is based upon the constitutional facts established by TransCanada's evidence and their existence at that time of the application. Provident pointed out that no other party filed any contrary evidence and no new facts became apparent which alter the facts that were presented in TransCanada's application.

Provident submitted that there is no authority that allows the NEB to postpone the effective date of a jurisdiction decision. If the Board decides it has jurisdiction, that jurisdiction cannot be delayed to provide for transition or because TransCanada will not be able to operate until it obtains a Certificate under the NEB Act. According to Provident, no decision on transition is required until the Board decides that it has jurisdiction.

Suncor Energy Inc. and Suncor Energy Marketing Inc. (Suncor)

Suncor took no position on whether the Alberta System is under federal jurisdiction. Suncor did ask that the jurisdiction and certification decisions of the Board be issued concurrently in order to avoid a regulatory gap resulting from a decision that the Alberta System is federal without a Certificate decision allowing the pipeline to operate.

Syncrude Canada Ltd. (Syncrude Canada)

Syncrude Canada submitted that the jurisdiction and certification decisions should be issued concurrently and that the gap between those decisions and the effective date of a Certificate should be as short as possible.

Western Export Group and Tenaska Marketing Canada (WEG)

In order to reduce commercial uncertainty, WEG requested that the Board issue the jurisdiction decision as quickly as possible and not wait to release this decision with the certification decision. WEG did not take issue with a declaratory order coming into force at a later date.

Government of the Northwest Territories (GNWT)

The GNWT supported TransCanada's application that the Alberta System is federal and is so because it is part of the TransCanada federal undertaking. According to GNWT, there is no need to look at the question of integrality of the Alberta System with that undertaking and there is no need to look into whether the Alberta System is exclusively dedicated to other TransCanada undertakings as suggested by ADOE.

Office of the Utilities Consumer Advocate (UCA)

The UCA took no position on whether the Alberta System is properly under federal jurisdiction. On the question of timing of any possible change in jurisdiction, the UCA advocated that the position of TransCanada was preferable since it created no regulatory gap or duplication.

Chapter 2

Views of the Board

Jurisdiction

Subsection 12 (2) of the NEB Act gives the Board, "full jurisdiction to hear and determine all matters, whether of law or fact." This authority to determine whether the Board has jurisdiction, is expressly provided to be "for the purposes of" the NEB Act. This gives the Board the authority to decide whether the Alberta System is within federal jurisdiction in order to determine whether it is subject to regulation by the Board under the NEB Act.

The combined impact of subsection 91(29) and paragraph 92(10) (a) of the *Constitution Act, 1867* is that works and undertakings, such as energy pipelines, which are located wholly within a province are within the exclusive jurisdiction of the provincial legislature, while those which connect one province with another province, or which extend beyond the limits of a province, are within the exclusive jurisdiction of the federal parliament.

The definition of "pipeline" in the NEB Act tracks these provisions of the *Constitution Act, 1867*. Pipelines under the NEB Act are interprovincial and international lines that are used or to be used to transmit gas, oil or other commodities.

The Alberta System is located wholly within the province of Alberta, and has up to now been provincially regulated. The Supreme Court of Canada, in *Westcoast Energy Inc. v. National Energy Board*[7] identified two ways that a pipeline within a province falls under federal jurisdiction under the *Constitution Act*: first, if that pipeline is part of a federal work or undertaking, or second, if it is integral to a federal work or undertaking. The Board agrees with TransCanada that the federal work or undertaking at issue in this case is the transportation of natural gas to markets within Canada and the United States.

Under the first test, the primary factor which determines whether several operations, such as TransCanada's Mainline, Foothills System and Alberta System, are a single federal work or undertaking, is if they are functionally integrated and subject to common management, control and direction. This involves a careful examination of the factual circumstances of the case. It is irrelevant how other similar undertakings are carried out, or that the undertaking might have been structured in another way.

Aside from functional integration and common management, there are other factors; however, they are not determinative. They include whether the operations are under common ownership, have a common purpose and are physically connected.

Under the second test, a pipeline, such as the Alberta System, comes within federal jurisdiction if it is essential, vital and integral to the core federal undertaking, the Mainline and the Foothills System, notwithstanding that it is not considered part of that undertaking. There is no

7 [1998] 1 S.C.R. 322

comprehensive test, but factors to consider include common management, ownership and coordination, and whether the federal enterprise is dependent on the provincial work. Particularly important is whether the provincial work has been transformed into an interprovincial enterprise by its connection to the federal enterprise.

The Board is satisfied that the Alberta System, the Mainline and the Foothills System are a single undertaking of TransCanada to transport natural gas to markets in Canada and the United States. The evidence is clear that these works are functionally integrated and share common management, control and direction. They are also under common ownership, share a common purpose and are interconnected.

Having made this finding, there is no need to consider the second test. However, if this were not the case, the Board is of the view that the second test is satisfied by the facts that TransCanada has presented. If it were required, the Board would also be satisfied that the Alberta System is essential to the combined TransCanada undertaking.

Only ADOE argued that the Alberta System was not part of or integral to a federal undertaking. It argued that the Alberta System had to be exclusively dedicated to the TransCanada Mainline and the TransCanada Foothills System. This erroneously limits the undertaking to that of those two pipelines. The Board is not persuaded that exclusive dedication is required for the Alberta System to be part of or integral to the combined federal undertaking of transporting gas to markets in Canada, including Alberta, and the United States. However if it were required, the Board would conclude that the Alberta System is exclusively dedicated to transporting natural gas to markets in Canada and beyond.

The Board is satisfied that the Alberta System is a pipeline within the meaning of the NEB Act, since it is part of a pipeline system that transports natural gas and extends beyond the borders of Alberta.

The Board will issue a declaratory order that the Alberta System is within federal jurisdiction and is a pipeline under the NEB Act.

Timing of Jurisdiction Order

Pursuant to subsection 19(1) of the NEB Act, TransCanada asked that the declaratory order come into force upon the issuance of a Certificate in respect of the Alberta System. Provident took the position that the Board does not have authority to postpone the effective date of a jurisdiction decision but did not address why subsection 19(1) does not provide that authority.

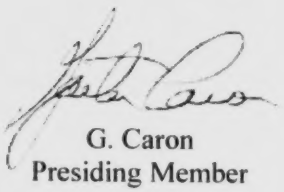
Subsection 19(1) allows the Board to "direct in any … order that [the order] … shall come into force at a future time or on the happening of any … event or condition specified in the … order …" According to this specific authority, the Board directs that the declaratory order come into force upon the effective date of any Certificate that might be issued or, if a Certificate is not issued, the date of the final decision of the Board on TransCanada's application for a Certificate.

The Board, exercising its authority in this manner, allows TransCanada to remain in compliance with section 30 of the NEB Act, which provides that pipelines under NEB jurisdiction must have a Certificate in order to legally operate.

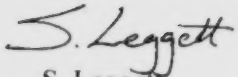
Chapter 3

Disposition

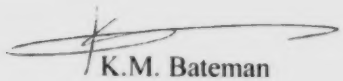
The foregoing constitutes the Board's Reasons for Decision in respect of TransCanada's application for a declaratory order that the TransCanada Alberta System is within federal jurisdiction and subject to regulation by the Board. The attached order shall come into force upon the effective date that any Certificate that might be issued or, if a Certificate is not issued, the date of the final decision of the Board on TransCanada's application for a Certificate.



G. Caron
Presiding Member



S. Leggett
Member



K.M. Bateman
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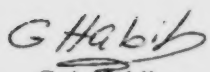
R.R. George
Member



G.A. Habib
Member

Calgary, Alberta
February 2009

Declaratory Order

DECLARATORY ORDER

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the Regulations made thereunder; and

IN THE MATTER OF an Application by TransCanada PipeLines Limited (TransCanada) filed with the National Energy Board under file OF-Fac-Gas-T211-2008-01 01.

BACKGROUND:

1. The National Energy Board (Board) received an application from TransCanada, dated 17 June 2008, with respect to the TransCanada Alberta System (Alberta System).

2. TransCanada requested that the Board make a declaratory order pursuant to subsection 12(2) of the NEB Act that the Alberta System is within Canadian federal jurisdiction and subject to regulation by the Board.

3. TransCanada also requested that the Board order that pursuant to subsection 19(1) of the NEB Act that the declaratory order made under subsection 12(2) come into force upon the date of issuance of, or effective date of, any Certificate of Convenience and Public Necessity (Certificate) which the Board may issue.

4. The Board issued Hearing Order GH-5-2008 and held a public hearing.

ORDERING CLAUSES:

5. Pursuant to subsection 12(2) of the NEB Act, the Board declares that the Alberta System is within Canadian federal jurisdiction and subject to regulation by the Board.

6. Pursuant to section 19(1) of the NEB Act this order takes effect upon the effective date of any Certificate that might be issued for the Alberta System or, if a Certificate is not issued, the date of the final decision of the Board on TransCanada's application for that Certificate.

Part II

Chapter 4

Background

4.1 The Facilities Process

In Part I, Reasons for Decision on Jurisdiction, the Board decided that the Alberta System, described in section 4.2, is part of a federal work and undertaking that consists of the Alberta System, the Mainline and the Foothills System. The Board issued a declaratory order to that effect which will come into force upon the effective date of any Certificate that might be issued for the Alberta System or, if a Certificate is not issued the date of the final decision of the Board on TransCanada's application for that Certificate.

Once the declaratory order comes into force the Alberta System will be a pipeline as defined in section 2 of the NEB Act. As such, section 30 of the Act will apply:

> 30. (1) No company shall operate a pipeline unless
> *(a)* there is a certificate in force with respect to that pipeline; and
> *(b)* leave has been given under this Part to the company to open the pipeline.
>
> (2) No company shall operate a pipeline otherwise than in accordance with the terms and conditions of the certificate issued with respect thereto.

Accordingly, for the Alberta System to operate, the Board must grant a Certificate for that operation and must grant leave to open.

Since the construction of the Alberta System has been authorized by the Alberta regulators (most recently the AUC) there is no application before the Board for a Certificate to construct facilities. As such, this application is somewhat different from the majority of facility applications that come before the Board. However the factors to be considered remain those set out in the NEB Act.

These factors are set out in section 52 of the NEB Act which reads:

> **52.** The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:
>
> *(a)* the availability of oil, gas or any other commodity to the pipeline;
>
> *(b)* the existence of markets, actual or potential;

(c) the economic feasibility of the pipeline;

(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and

(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

In its Sumas Energy 2, Inc. decision, the Board discussed the factors and criteria that the Board considers when assessing the public interest. It stated:

> In the Board's view, under the NEB Act, the factors to be considered and the criteria to be applied in coming to a decision on public interest or public convenience and necessity may vary with the application, the location, the commodity involved, the various segments of the public affected by the decision and the purpose of the applicable section of the NEB Act.[8]

In addition to deciding whether the operation of the Alberta System is in the public interest, the Board can, pursuant to subsection 54 (1) of the NEB Act, "issue a certificate subject to such terms and conditions as the Board considers necessary or desirable in the public interest."

Based on the evidence presented in this proceeding, the Board has decided that it will issue, subject to the approval of the Governor in Council, a Certificate for the continued operation of the Alberta System. The Certificate will be subject to the conditions set out in Appendix II. The balance of this Part explains the reasons for this decision.

In Chapters 6 through 9 the Board explains why it has made the decision to issue a Certificate and describes the Certificate conditions. In Chapters 5 and 10 the Board examines other issues that were raised in the hearing. The Board confirms, in Chapter 11, its decision to grant a Certificate for the Alberta System.

4.2 The TransCanada Alberta System

The Alberta System dates from 1954 when NGTL's predecessor, the Alberta Gas Trunk Line Company Ltd., was incorporated by special act of the Alberta legislature. The facilities which comprise the Alberta System are the result of over 50 years of infrastructure development. The system includes in excess of 23 500 kilometres of pipe varying in size from NPS 2 to 48 (50 to 1200 millimetres (mm)).[9] There are a number of above-ground facilities including 49 compressor stations containing 101 compressors which keep the gas moving down the pipeline and approximately 1200 meter stations which measure the quantity of gas flowing at custody

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8 National Energy Board EH-1-2000 Reasons for Decision, Sumas Energy 2, Inc. (Facilities), March 2004 at page 11.

9 The nominal pipe size standard (NPS) is a standard sizing system referring to the diameter of the pipe measured in inches

transfer points. TransCanada operates 10 maintenance offices within the province which support operations and maintenance activities for the Alberta System.

Natural gas transported by the Alberta System enters at approximately 1000 receipt points. At this time about 7.5 percent of the gas transported by the Alberta system originates outside the province. The gas leaves the Alberta System at approximately 200 delivery points. About 20 percent of the gas is delivered within Alberta and the rest is delivered to other pipeline systems leaving the province.

Chapter 5

Scope and Timing

5.1 Scope of Certificate

There was a difference of opinion among parties on what facilities the Board should include in the Certificate for the Alberta System. That difference relates to Alberta System facilities approved by Alberta regulators but not yet constructed or in operation at the time the Certificate comes into force (Approved but Not Constructed). During the proceeding, parties made a number of motions and other requests relating to this issue.[10]

Although TransCanada identified a number of Approved but Not Constructed facilities that it proposed be included in a Certificate, discussion was focused on one in particular. On 20 November 2007, TransCanada applied to the AUC for the North Central Corridor Project (NCC) consisting of approximately 300 km of new NPS 42 (1100 mm) pipe and two new units at the Meikle River Compressor Station. The estimated capital cost of the NCC is $922.7 million with construction scheduled to start in the fourth quarter of 2008 and finish in the second quarter of 2010. On 10 October 2008, the AUC approved the NCC project and TransCanada has begun construction.

Views of the Parties

TransCanada requested that the Board issue a Certificate for the continued operation of the Alberta System and that the Certificate include the operation of Approved but Not Constructed facilities at the effective date of the Certificate. The Certificate would not include the construction of the Approved but Not Constructed facilities since they have already been approved by the Alberta regulator. The result would be the Board accepting and acting on the provincial approvals without providing new construction approvals of its own.

In support of its request, TransCanada cited past Board jurisdiction decisions[11] where the Board accepted the provincial approvals up to the date that the Board assumed jurisdiction and only regulated prospectively from that date forward. In other words, in these past decisions, the Board did not approve the construction of any of the existing facilities but only their ongoing operation.

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10 Provident Energy Limited (Provident) motion dated 22 August 2008; Provident motion of 15 October 2008; Suncor Energy Inc. and Suncor Energy Marketing Inc. (collectively Suncor) letter of 12 September 2008; Alliance Pipeline Ltd. (Alliance) motion dated10 November 2008; Alliance preliminary motion heard 19 November 2008.

11 See *National Energy Board letter decision and related orders, Westcoast Energy Inc. carrying on business as Spectra Energy Transmission – West re pipeline facilities owned by Westcoast Transmission company (Alberta) Ltd., 16 November 2007* (Westcoast Alberta); *National Energy Board Reasons for Decision Westcoast Energy Inc. GHW-3-2000* (Maxhamish); *National Energy Board Reasons for Decision Westcoast Energy Inc. MH-2-96* (Helmet/Peggo Facilities).

TransCanada acknowledged that these cases involved only a change in jurisdiction over existing facilities and not a change over any Approved but Not Constructed facilities. However, by extension, TransCanada argued that the Approved but Not Constructed facilities should be treated the same as existing facilities. According to TransCanada, to do otherwise would result in duplicating decisions that had been made by the appropriate Alberta regulators. TransCanada argued that the Board acting on these Alberta decisions would facilitate the practical, efficient, expeditious and equitable transition to Board regulation and would be in the public interest.

Both Suncor and Syncrude supported TransCanada's position. Suncor also suggested that there was sufficient evidence on the record for the Board to conduct an environmental assessment and approve the construction of these facilities if it could not rely on decisions of Alberta regulators.

The ADOE urged the Board to look at the Alberta System as a whole and not examine each individual approval that created the system. It agreed with TransCanada that the Board should treat Approved but Not Constructed facilities in the same manner as it had treated existing facilities in past transfer of jurisdiction decisions. To do otherwise, ADOE said, would be contrary to the public interest and would require system development to stand still during the Board's jurisdiction proceedings. This position was supported by the UCA.

According to ADOE, the Board can use the principle of comity to include Approved but Not Constructed facilities in a Certificate. That would leave the Board to regulate any ongoing construction prospectively and not duplicate past decisions made by provincial regulators. BP Canada, although taking no position with regard to the Approved but Not Constructed facilities, suggested that comity was not appropriate in this situation.

Alliance and Provident argued that the mandatory language of the *Canadian Environmental Assessment Act* (CEA Act) and the NEB Act requires the Board to ensure that environmental assessments under the CEA Act have been conducted on Approved but Not Constructed facilities and approvals under the NEB Act have been obtained before construction could continue on these facilities and before they could be operated.

Views of the Board

The Board considers it important that the scope of any Certificate serve the public interest and agrees with TransCanada that any transfer of jurisdiction should be practical, efficient, expeditious and equitable unless there is a compelling reason to do otherwise.

A scope of Certificate that is practical allows effective regulation of the Alberta System to continue both before and after the transfer of jurisdiction. The Alberta System has developed and expanded over more than 50 years. The existing pipeline system is the result of numerous provincial approvals over that period. TransCanada's filing of this application did not limit the authority of Alberta regulators to continue to grant approvals. Despite the filing of the application, the Board does not regulate the Alberta System while it is considering the issues of jurisdiction and certification. Until the Board makes a decision that is in

force, the Alberta System is entirely under the supervision of provincial regulators such as the AUC.

A finding that the Board cannot accept as valid the decisions made by provincial regulators prior to a jurisdiction transfer to the Board would negate the effect of those decisions as soon as the transfer is effected. This would create a period during which the Board cannot regulate, yet decisions of Alberta regulators would be of uncertain effect. The Board would then have to duplicate decisions that provincial regulators have already made. This duplication could produce inconsistent decisions and create uncertainty during construction.

If the Board cannot accept the decisions of provincial regulators, the transfer would be inefficient. It is important that all parties know at all times who is the appropriate regulator, including any period during which a change in regulators is being considered. If the Board cannot act on provincial regulatory decisions made during such a period, parties will not be able to identify the correct regulator until a decision is made.

For example, if the Board were to decide that it does not have jurisdiction over the Alberta System, there would be no question but that the AUC has authority to regulate and that decisions made by the AUC during the Board process would be valid. On the other hand, if the Board decides that it has jurisdiction but is not able to rely on provincial decisions, those same AUC decisions would become ineffective after the fact and the Board would have to make new decisions.

It is fair and equitable that TransCanada and others be able to rely on decisions made by provincial regulators and act on them without fear that new applications will be required to a different regulator with possible different results. The Board agrees with counsel for Suncor who cited cases referring to the presumption against retrospective effect[12] that the presumption should apply and the Board should not make decisions that produce an inequitable retrospective effect.

ADOE suggested that the Board could find support for reliance on provincial decisions in the principle of comity. However, counsel for BP Canada suggested that comity only applies where proceedings have been commenced in one forum and at the same time in a second forum, which is not the case here. *In Reference re: Legislative Authority over Bypass Pipelines*[13], often referred to as the Cyanamid case, the Ontario Court of Appeal provided the underlying basis for the principle which helps "avoid the duplication of proceedings in courts of concurrent jurisdiction." According to the Court, "These principles … stem from a mutual interest,

12 *Syncrude Environmental Assessment Coalition v. [Alberta] (Energy Resources Conservation Board)* [1994] A.J. No. 176; 17 Alta. L.R. (3d) 368 (Alta. C.A.); *Spooner Oils v. Turner Valley Conservation Board* [1933] S.C.R. 629.

13 *Reference re Legislative Authority over Bypass Pipelines*, [1988] O.J. No. 176, 64 O.R. (2d) 393.

a sense of the inconvenience which would otherwise result and from a moral necessity to do justice in order that justice may be done in return ..."[14]

The Board is of the view that the Certificate should include the Approved but Not Constructed facilities in order to provide for proper transfer of jurisdiction. This would be consistent with the principles that underlie comity and the avoidance of retrospective regulation. It is also in the public interest. TransCanada provided in evidence a list of the facility applications that are currently pending before Alberta regulators. The facilities that have been approved provincially on the date that the Certificate comes into force will be included in the Certificate. Those that are not, will need to be approved subsequently.

5.2 Timing

In its application, TransCanada asked that the Board issue the Certificate on "... a date certain to be fixed and determined by the Board ... such date to be a specified time following receipt of approval of the Governor in Council."[15] TransCanada said that it would need some time to file its tariff between Governor in Council (GIC) approval and the effective date of the Certificate. TransCanada later clarified that there was no business reason for the Certificate to come into effect any later than the date the Board receives GIC approval.

In June 2008, just after TransCanada's application had been filed, BP Canada wrote to the Board expressing concern about the uncertainties that resulted from the application. At that time, BP Canada urged the Board to conduct a speedy process to resolve the matters in TransCanada's application. In argument, BP Canada reiterated this request, asking that the Certificate be issued as quickly as possible.

In response to an information request, the staff of the National Energy Board submitted that approximately three months following the release of the decision would be required to reach the point where it could take on regulation of the Alberta System in an orderly fashion.

Provident urged the early issue of a Certificate, without the need for a later effective date. WEG/Tenaska and Syncrude also submitted that a Certificate should come into force as soon as possible.

Views of the Board

The Board recognizes the need for certainty and an orderly transition to federal jurisdiction. Based on the evidence, the Board is satisfied that most parties to the hearing could proceed directly with the transition. The Board notes that staff from the NEB indicated that they would require three months to prepare for an orderly transition. However, the Board

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14 *49 D.L.R. (4th) 566 at 573.*

15 TransCanada Application page 5 of 6.

finds that it is in the public interest for the transition to occur sooner rather than later. The Board is of the view that providing a short period of time for transition in addition to the time required for GIC approval would also be in the public interest. Therefore, the Certificate will come into force on the 14th day after the NEB issues it. The Board is satisfied that the NEB staff will be able to manage the transition within this timeframe.

Chapter 6

Supply, Markets and Financial Considerations

TransCanada showed that both supply of, and markets for, natural gas transported on the Alberta System are well established. The Alberta System transports a large proportion of the gas produced from the Western Canada Sedimentary Basin to markets within Canada and the United States. According to TransCanada, it expects that the Alberta System will continue to be used at a reasonable level over its economic life and demand charges will continue to be paid. Accordingly, the Alberta System has been and will continue to be economically feasible.

In 2007 the Alberta System transported in excess of 10 Bcf (283 million m^3) of gas per day and in excess of 4 Tcf (113 billion m^3) for the year. The 2007 throughput represented 68 percent of total Western Canadian production and 16 percent of total North American natural gas supply. The combined conventional and unconventional gas supply available to flow on the Alberta System is forecast to remain in the range of approximately 10 to 11 Bcf (283 to 312 million m^3) per day to the end of the forecast period in 2020.

The 2008 average throughput for the Alberta System, which comprises the Firm Transportation Contract Demand and Interruptible Transportation, is forecast to be approximately 10.6 Bcf (299 million m^3) per day. Average throughput is forecast to increase steadily to approximately 11.6 Bcf (327 million m^3) per day in 2013.

Gas originating on the Alberta System serves the Canadian and United States markets. TransCanada expects Western Canadian market demand to increase significantly from its 2007 level of approximately 4.8 Bcf (135 million m^3) per day, driven largely by oil sands production requirements.

The existing Alberta System has been financed by debt and equity. Since 1998, the financing requirements for the Alberta System have been met by TransCanada which has the ability to finance future financial requirements of NGTL.

TransCanada's evidence on supply, markets and financial considerations was not challenged by any party to this proceeding.

Views of the Board

Based on this evidence provided by TransCanada, the Board is satisfied that the Alberta System has adequate supply and is connected to sizable markets. The Board believes that gas will continue to flow at a reasonable level through the Alberta System resulting in tolls being paid. This will ensure that the pipeline remains economically feasible and ensures that adequate financing will remain available to the Alberta System.

Chapter 7

Landowner Issues

The Canadian Alliance of Pipeline Landowners' Associations (CAPLA) is a national umbrella organization made up of provincial and regional associations of pipeline landowners.

The Alberta Association of Pipeline Landowners (AAPL) is a CAPLA-member organization formed originally by Alberta and Saskatchewan landowners affected by the TransCanada Keystone Pipeline project. AAPL is composed of about 60 landowners who own or lease land along an 18 inch (450 mm) diameter pipeline of the Alberta System.

CAPLA and AAPL (APPL/CAPLA) participated jointly as intervenors in the Facilities Process.

7.1 Consultation

AAPL/CAPLA submitted that TransCanada should consult with all landowners on the potential negative effects of the Board's granting a Certificate before the Board makes its decision. They say that consultation after the decision is inadequate because it leaves landowners to depend on the goodwill of TransCanada to address the potential negative effects of the transfer to federal jurisdiction. Moreover, if landowners are unsatisfied with the consultation undertaken by TransCanada, the methods of recourse available to them will be costly in terms of time and money.

AAPL/CAPLA noted that TransCanada had not undertaken any detailed comparison of the Alberta and federal regulatory regimes to determine what, if any, adverse impacts there may be to landowner interests.

In addition, AAPL/CAPLA submitted that TransCanada's proposed post-certification consultation program could create a situation where landowners would be subject to different requirements under federal regulation and the landowners would not necessarily be aware of these differences. AAPL/CAPLA stated that landowners need to be informed of these changes and any potential implications on their day-to-day operations. AAPL/CAPLA argued that a Certificate should be issued only after this consultation has taken place and measures designed to mitigate adverse impacts that will result from the transfer are identified and planned for.

Views of TransCanada

TransCanada stated that it has an Integrated Public Awareness (IPA) Program and an Aboriginal Relations Program that apply to the Alberta System and other TransCanada pipelines. The IPA Program employs a coordinated approach to meeting public awareness requirements of regulators.

TransCanada's application originally proposed a two-phase NEB hearing: the first on jurisdiction followed some time later by a facilities hearing. According to TransCanada, it would consult

with landowners and others only after the Board decided that it had jurisdiction over the Alberta System. Only if the first phase resulted in the Board having jurisdiction, would the second phase proceed to determine if a Certificate should be issued and under what conditions.

Upon the Board deciding to hear jurisdiction and the request for certification in the same hearing, TransCanada stated that it would undertake a broad-based public consultation and communications program after the Board issued the decisions. The program would ensure awareness and understanding among stakeholders of the effects and implications of a jurisdictional change. The target audience of this program would include potentially affected landowners, Alberta communities, federal and provincial government departments and regulatory agencies, Aboriginal communities, and other stakeholders who may include non-governmental organizations, landowner associations and commercial third parties. The program would be implemented in a phased manner using participatory community involvement practices.

During the hearing, TransCanada acknowledged that a change from provincial to federal jurisdiction will result in changes affecting landowners. In response, TransCanada committed to distribute a notification letter upon receipt of the blue book decision and before the effective date of the Certificate. The purpose of this notification would be to inform landowners of the Board's decision and some of the changes resulting from that decision. The letter will also provide landowners with contact information for TransCanada. TransCanada also said that it would be helpful to hear what information the Board thought should be contained in the letter.

TransCanada also plans to contact the Aboriginal communities with whom it currently has relationships as well as three Treaty Groups (Treaties 6, 7 and 8) and the Métis Nation of Alberta, through a combination of face-to-face meetings, telephone meetings, distribution of letters via email, facsimile and regular mail, and distribution of a fact sheet and NEB documentation.

As part of its Aboriginal Relations Program, TransCanada will provide information related to a change in jurisdiction, identify any potential concerns, and communicate requests from the Aboriginal communities and groups for an NEB information session.

Views of the Board

The principal point of disagreement between TransCanada and AAPL/CAPLA, concerning consultations, is around the timing of the consultation program: AAPL/CAPLA submitted that full consultation must precede consideration of whether to issue a Certificate; and TransCanada proposed to undertake full consultation after a Certificate is issued.

The Board expects applicants to consider consultation with potentially affected groups or persons and to demonstrate the adequacy of the consultation carried out. The Board notes that TransCanada's proposal of a two-phased hearing would have allowed additional time for consultation. The Board however decided that it was important to hear the entire

application in one hearing in order to minimize the period of uncertainty created by the filing of this application.

The Board accepts TransCanada's commitment to prepare and distribute a notification letter to inform landowners of the Board's decision. The Board expects that the notification letter will include: information on the Board's decision; contact information for the NEB; a copy of the Board's publication "Living and Working Near Pipelines: Pamphlet"; an indication of any relevant changes that will take place on the effective date of the Certificate; and key contact information for relevant sources within TransCanada should the landowners require further information. This notification letter should be distributed as soon as possible after the release of the Board's decision.

The Board expects a consultation program to be accessible and inclusive in order to provide an opportunity for potentially affected persons or groups to raise comments or concerns. The Board further expects to see the details regarding the design and the results of the consultation program, and for these reasons, the Board has decided to include Certificate Conditions 7, 8 and 9 regarding TransCanada's Stakeholder Relations Program (listed in Appendix II). The Board notes that it has the mandate and tools to provide regulatory oversight during the life of facilities. In other words, the Board is not restricted to the application process to address potential concerns associated with the Alberta System.

The Board is of the view that the consultation program to be undertaken by TransCanada after the release of the Board's decision is adequate for the following reasons: there is no proposed construction of new facilities or changes to existing facilities; the Board has attached Certificate Conditions 7, 8 and 9; TransCanada has committed to distribute a notification letter; and, the Board has a mandate for regulatory oversight during the facilities' life.

7.2 Landowner Socio-Economic Matters

The only parties to raise socio-economic impacts associated with this application were AAPL/CAPLA. AAPL/CAPLA contended that a change in jurisdiction would negatively impact landowners because the regulatory requirements under the NEB Act are more onerous than those under provincial regulation. These consist of different rules regarding availability of costs and intervenor funding and greater restriction on farming and cultivation under federal law. The associations say that TransCanada failed to consult on these matters as required by the Board's *Filing Manual* and the Board's specific guidance for this case.

As a result, AAPL/CAPLA requested that the Board not issue a Certificate to TransCanada for the Alberta System. They submitted that, before a Certificate is granted, TransCanada should be required to carry out a detailed analysis of the changes in land use restrictions that result from the transfer of jurisdiction, address the concerns of landowners and commit to mitigation measures.

Alternatively, AAPL/CAPLA submitted that if the Board decides to grant a Certificate, it should do so subject to conditions that mitigate some concerns and represent "best practices" in pipeline/stakeholder relations. AAPL/CAPLA stated that these conditions are in large measure based on provisions included in a recent settlement between Enbridge Pipelines Inc. and its landowners on Enbridge's Southern Lights (NEB Hearing Order OH-3-2007) and Alberta Clipper (NEB Hearing Order OH-4-2007) pipeline applications.

These conditions would require TransCanada to develop and implement a landowner complaints tracking system, a pipeline depth monitoring program, and an integrity and maintenance dig procedure in order to address specific concerns relating to these matters.

Other conditions were proposed to:

- require TransCanada to grant permission to landowners to cross the Alberta System pipelines with vehicles or equipment used for farming operations and to cultivate over the pipelines to a depth of 45 cm or pay compensation if there is damage from not having this permission;
- require TransCanada to give landowners the option to have the pipe removed from the ground on future abandonment;
- require TransCanada to offer landowners annual compensation, of indefinite duration, in respect of any new facilities related to the Alberta System to compensate landowners for the ongoing impacts of pipeline operation; and
- require TransCanada to obtain the written consent of the landowner for any proposed additional use of the right of way at the time of that proposed additional use.

Views of TransCanada

TransCanada submitted that the continued operation of the Alberta System is in the public interest and that the continued provision of natural gas to people and businesses outweighs any negative impacts arising from different regulatory requirements. TransCanada further submitted that landowner rights cannot be affected by the operation of law resulting from a change of jurisdiction. Thus, TransCanada argued that the matters listed by AAPL/CAPLA are not relevant to the question as to whether or not the Board should grant a Certificate.

TransCanada said that it uses common management systems, programs and processes for all of its wholly-owned Canadian pipeline assets including the Alberta System, the Mainline, and the Foothills System. The management systems, programs and processes have been developed to meet National Energy Board requirements along with any codes and standards incorporated by reference and other applicable provincial and federal regulatory requirements, permit conditions or approvals.

The management and operations programs and procedures in place for the TransCanada Alberta System address the areas identified in the NEB's filing guidance, specifically, environment, socio-economics, safety, crossings, integrity, security and emergency management.

TransCanada opposed all conditions proposed by AAPL/CAPLA. According the TransCanada, some of them duplicate existing TransCanada practices and programs or NEB requirements. TransCanada has existing file and incident tracking systems that would be duplicated if it were required to have a separate landowner complaint tracking system. A depth monitoring program is not required because TransCanada verifies depth of cover in several manners and investigates as required on a site-specific basis.

TransCanada's practice is not to restrict farming equipment from crossing rights of way. TransCanada says that it does not require landowners to obtain permission for crossings required by regular farming practices. Regarding integrity and maintenance digs, TransCanada's practice is to approach landowners for permission to enter the right of way and take into consideration their concerns in scheduling the proposed dig, and to address compensation for damage caused as required.

TransCanada noted that the Board has the authority to condition any abandonment order to take effect only after the conditions on the order have been satisfied. Only then could the NEB lose jurisdiction. Therefore, a condition relating to abandonment would be redundant. Additionally, TransCanada indicated that its practice is to build an abandonment plan in consultation with landowners according to the specific concerns that they might have.

TransCanada indicated that it would honour existing contracts and enter into new contracts as required and according to operational requirements and business needs. TransCanada stated that it has all land rights for the application and does not plan to acquire more. In the future, it would deal with land rights and access on a project-specific basis.

Views of the Board

In Chapter 9, Benefits and Burdens, the Board will discuss the effect of the impacts that, according to AAPL/CAPLA, arise from the Board's decision to grant a Certificate. These views address the conditions proposed by AAPL/CAPLA.

AAPL/CAPLA requested that conditions be included in the Certificate on the basis that they represent best practices regarding the relationship between companies and landowners. The only evidence of this was that some were matters that had been negotiated between another NEB-regulated company and its landowners. More importantly, there was no evidence presented that TransCanda's existing practices and programs do not accord with best practices or were otherwise deficient. This is significant considering that TransCanada owns and manages the Alberta System currently.

The Board notes TransCanada's evidence that the management and operations programs and procedures in place for the TransCanada Alberta System have been developed to meet NEB requirements and other applicable provincial and federal regulatory requirements, permit conditions and approvals. The Board further notes that the Board's

regulatory framework sets requirements, monitors and verifies compliance to the requirements, and applies enforcement to correct non-complying company operations.

The Board will not condition the Certificate for continued operation of the Alberta System as proposed by AAPL/CAPLA as the conditions are either unnecessary or beyond the mandate of the Board.

The Board considers that TransCanada's existing programs for file and incident tracking adequately handle tracking of landowner complaints. Its procedures for depth monitoring and integrity and maintenance digs address any concerns that would be addressed by the programs proposed by AAPL/CAPLA. The Board accepts TransCanada's indication that its practices address the concerns expressed about permission for equipment crossing of pipelines.

Under the NEB Act, abandonment is to be addressed at the time that it occurs so that decisions can be based on the specific facts at that time. The Board will not restrict the options that will be available at abandonment by imposing the requested condition. Such a restriction would not likely be enforceable. In the same fashion, the Board will not put restrictions on future land acquisition as requested by AAPL/CAPLA.

Finally, the proposed conditions that address compensation are not within the Board's mandate under the NEB Act and therefore will not be imposed.

Chapter 8

Safety and Environment

8.1 Safety

The NEB Act stipulates that no company shall operate a pipeline unless there is a Certificate in place to operate and leave has been given to the company to open the pipeline. Leave to open is to be given if the Board is satisfied that the pipeline may be safely used for transmission.

Safety of every pipeline system is the Board's paramount consideration. During review of an application for a Certificate, the Board seeks evidence that the pipeline would comply with NEB regulations and all applicable safety codes and standards. Should environmental or operating conditions not exist or be specifically addressed in the codes and standards, the Board ensures that the applicant has assessed, and would design for, the potential effects of these conditions. It would also ensure that the designs and measures required to safeguard the pipeline would be in place during construction and operation.

Prior to a new pipeline being operated, it is pressure tested in accordance with the *Onshore Pipeline Regulations, 1999* (OPR-99) to demonstrate it is sufficiently strong and leak free. An application from the company for leave to open requires documentation that the pipeline was constructed and tested in accordance with the OPR-99 and that safety devices have been inspected and work properly. The required information is set out in the NEB's *Filing Manual*.

With the change of jurisdiction of the Alberta System facilities from provincial to federal jurisdiction, the Board is considering an extensive and mature pipeline system constructed and operated over the past five decades together with system expansions approved by the provincial regulator which have not yet been constructed (Approved but Not Constructed facilities). The Approved but Not Constructed facilities are expected to be operational, partially constructed or yet to be constructed at the time of certification.

8.1.1 Existing System

As mentioned in section 4.2, the Alberta System is a natural gas pipeline system located within Alberta that is used to transport natural gas from receipt points to delivery points, including points of interconnection with export and interprovincial pipelines. The Alberta System consists of in excess of 23 500 kilometres of pipe ranging in diameter NPS 2 to 48 inches (50 to 1200 mm) as well as approximately:

- 49 compressor stations containing 101 units ranging in size from 540 to 30 700 total kilowatt (KW);
- 1200 metering stations; and
- 1000 receipt points and 200 delivery points.

TransCanada noted in its application that the existing Alberta System facilities have been designed, constructed and operated over a time span from 1954 to the present and that, at the time of construction, the facilities making up the Alberta System were constructed and tested by NOVA Gas Transmission Ltd. or its predecessors in accordance with all of the applicable engineering codes, standards and specifications of the day.

While having met the applicable engineering and regulatory requirements at the time of construction, TransCanada indicated that some of the facilities making up the Alberta System do not currently meet the latest version of the Canadian Standards Association Standard Z662, Oil and Gas Pipeline Systems (CSA Z662).

TransCanada stated that it did not intend to modify any part of the Alberta System to meet the latest version of CSA Z662 since, like other systems the Board regulates such as the Mainline and the Foothills System, it would be impractical to modify the system. TransCanada noted that pursuant to sections 2 and 3 of the OPR-99, Parts 1 to 5 of the OPR-99 do not apply to facilities within the Alberta System that were in existence and provincially authorized to be constructed and operated prior to the OPR-99 coming into force in 1999. To the extent that any facilities within the Alberta System were constructed following the coming into force of the OPR-99 and those facilities do not comply with Parts 1 to 5 of the OPR-99, TransCanada would seek to exempt them from the requirements of Parts 1 to 5 of the OPR-99 as may be required.

TransCanada pointed to the system's long history of safe and efficient operation and to its maintenance and integrity program that has ensured and would continue to ensure safe and efficient operation. It stated that modification of facilities is not required for safety or operational purposes, nor would it be practical from the standpoints of construction, engineering and economic feasibility.

In its 7 August 2008 filing guidance, the Board sought information regarding how the current operation of the Alberta System meets the intent of the regulations and incorporates the NEB's goal oriented management system approach. The Board was specifically interested in: (a) how TransCanada manages environment, socio-economics, safety, integrity, crossings, security and emergency management on the Alberta System; and (b) supporting evidence of the effectiveness of the Alberta System programs, normally given through audits, subsequent corrective action plans and performance metrics.

In response to the Board's guidance TransCanada described the management and operations programs and procedures in place for the Alberta System. TransCanada noted that these were the same programs that are used for the Mainline and Foothills System, with which the NEB is already familiar. TransCanada indicated that the effectiveness of Alberta System programs and procedures is measured by inspections, monitoring and internal and external audits of its operational integrity and Health Safety and Environment programs. TransCanada pointed out that these are the same programs that were in place for the Board's audit of Mainline operations in 2002, Foothills System operations in 2003 and the TransQuébec & Maritimes Pipe Line operations in 2006.

TransCanada stated that it had initiated a Consolidated Audit Program in the spring of 2008 which integrates four long-existing audit and inspection activities. The concept behind the

program is to audit all compression, bundled with a sampling of measurement and pipeline facilities, within a geographic area every four years. TransCanada indicated that four areas have been audited since July 2008 with no audit findings classified as reportable to the regulator.

TransCanada indicated that it is subject to audit by the Alberta Boiler Safety Authority (ABSA) and the Safety Codes Council (SCC) to maintain its accreditation with these two authorities. The ABSA audits certain construction, repair and maintenance activities related to boilers, pressure vessels and relief valves and the performance qualification testing of pressure equipment welders and machine welding operators. ABSA has audited TransCanada twice in the past six years and all audit findings were addressed to the satisfaction of the ABSA auditor. The SCC audits with respect to electrical inspections.

As requested by the Board, TransCanada submitted a list of incidents for the past 10 years which would have been reportable using OPR-99 definitions and a description of how the issues associated with the incidents were resolved. TransCanada also submitted an officer's certificate from James Baggs, Vice President, Field Operations and Engineering, certifying that all control and safety devices on the Alberta System are inspected and tested for functionality on a regular basis in accordance with the provisions of the applicable TransCanada Operating Procedures and that repairs are made as required.

Views of the Board

For a new pipeline system, compliance with the design requirements of the prevailing regulations is normally sufficient to ensure its safety. In these circumstances, the Board seeks evidence demonstrating that the pipeline system was designed, constructed and tested in accordance with those regulations prior to granting leave to open the facility. Once it is in operation, the pipeline is subject to potential corrosion, stresses and strains related to its operation. Integrity management and maintenance programs maintain the safety of the pipeline by ensuring that the systems are monitored and repaired as needed.

The Board is of the view that the safety of the existing Alberta System is best assessed by its operating performance and the degree to which TransCanada has implemented integrity management and maintenance programs to ensure safety and regulatory compliance. As a result, the incident history of the Alberta System, how the company responded to those incidents and the adequacy and effectiveness of TransCanada's management systems was important evidence in this proceeding.

The Board notes that frequency of ruptures (line breaks) during the past five years has been higher on the Alberta System than on the Mainline, Foothills System or TransQuébec and Maritimes Pipe Line. The Board is of the view that a condition requiring a third party audit is warranted to ensure the Alberta System programs and procedures remain adequate and effective over the long term.

Since the Board has not previously regulated the Alberta System the Board is of the view that further information is required to enable it to effectively regulate its ongoing operation. The Board will therefore require the submission of Geographic Information Systems (GIS) information and engineering reports related to past incidents. Board staff will also participate as observers in the third party audit process to gain knowledge of the operation of the system.

The Board is of the view that a company must be ready to respond to significant incidents in an effective manner as soon as practicable following the start of operation and will typically request the submission of emergency procedures manuals prior to the operation of a newly certificated pipeline. In this instance, the company has existing emergency procedures manuals in place which may need to be updated to reflect a change in jurisdiction prior to their submission to the Board. The Board also notes that TransCanada currently operates the Foothills System which is under federal jurisdiction and which parallels parts of the Alberta System in the southern half of the province. The Board will impose conditions that require a field exercise of the emergency procedures within a year of operation on a portion of the system where company staff may not be familiar with the differences in responding to emergencies for facilities which are federally regulated. The results of the exercise and any steps to improve the response are to be reported to the Board.

The Board is satisfied that the Alberta System is currently safe and will continue to be operated safely. The Board will not require further evidence to grant leave to open for the continued operation of the existing facilities. For administrative purposes, the Board will obtain additional data, including the current maximum operating pressure for a few facilities, which will be included in the formal Leave to Open Order which will be issued should GIC approve the issuance of the Certificate and before the Certificate comes into force.

The conditions that the Board is imposing are to ensure long term safe operation of the system.

8.1.2 Approved but Not Constructed Facilities

TransCanada continues to operate and manage the Alberta System during the period of time between application and the Board's decision respecting jurisdiction and certification. This continued operation includes applying for and obtaining provincial approvals for new facilities to provide new services to its shippers. It was inevitable that some facilities would be approved, constructed or partially constructed during this intervening period.

The facilities which had not yet been completed at the time of the oral hearing were:

- North Central Corridor Loop (Buffalo Creek West Section);

- North Central Corridor (North Star and Red Earth Sections);
- Collicutt Connection Pipe;
- Shady Oak Connection Pipe;
- Smoky River Expansion (Shady Oak Section);
- Egg Lake Meter Station;
- Collicutt Sales Meter Station;
- Meikle River Compressor Station Units C3 and C4; and
- Woodenhouse Compressor Station Unit B2.

TransCanada expected that one facility, the Buffalo Creek West Section of the North Central Corridor Loop, would be constructed using Alternative Integrity Validation (AIV) which is proposed as an alternative to hydrostatic testing. TransCanada noted that AIV had already been used both on NEB-regulated pipelines and AUC-regulated pipelines. TransCanada noted that AIV replaces strength tests with a quality management system to eliminate the potential causes for hydrostatic test failures. TransCanada stated that the benefits of the alternative process were reduced environmental impacts since it eliminates the need for water associated with hydrostatic test processes and that it helps reduce construction duration and costs for the overall project.

TransCanada planned to apply to the AUC for approval of AIV in December 2008 with an anticipated in-service date for this facility in April 2009. TransCanada also stated that it was contemplating the use of AIV on the construction of the North Star and Red Earth sections of the North Central Corridor. However, no determination has yet been made. If AIV would be proposed, the required approval from the Board would be sought.

TransCanada presented two options regarding the supervision of construction of Approved but Not Constructed facilities that are included in any Certificate that the Board may issue. The first option would have the NEB regulating construction of these facilities as soon as a Certificate comes into force. The second option would leave regulation of construction with provincial regulators until construction is complete at which time the NEB would begin active regulation.

TransCanada indicated that it preferred the first option. No parties supported the second option.

Views of the Board

The Board has determined that it will commence regulating construction of Approved but Not Constructed facilities as soon as a Certificate comes into force.

To ensure there are no regulatory gaps, the Board will enforce provincial approval conditions for the construction of the facilities on the effective date of the certification of these facilities. To this end, the Board will include conditions requiring the filing of provincial approvals and Environmental Protection Plans. The Board notes that certain provincial agencies such as Alberta Environment specify that their inspectors and a

designated Director may make amendment to the provisions of these approvals. In order to maintain the flexibility incorporated within these approvals the Board has decided that a condition specifying that a designated employee of the Board or the Board itself would approve the amendments will be added to the Certificate. Conditions specifying the filing of construction safety manuals, field joining programs, pressure testing programs, construction schedules, construction specifications and construction reports will also be included in the Certificate. These conditions normally require the filing of manuals, schedules, programs and specifications prior to the commencement of construction or a specific construction activity. Since TransCanada has stated that the Approved but Not Constructed facilities will be fully compliant with the OPR-99, TransCanada shall submit this information on the effective date of the Certificate for all facility projects currently under construction at the time of certification. The Board will also include a condition that requires TransCanada to document its pressure testing program for Approved but Not Constructed facilities and promptly inform the Board of any failures that occur during this program.

As previously communicated to TransCanada in its letter of 19 October 2006, the Board continues to consider the AIV process as an evolving process and to be in the trial stage. Should TransCanada proceed with AIV for the Approved but Not Constructed facilities which will not be in operation prior to the effective date of a Certificate, the onus will be on TransCanada to provide compelling evidence to the Board that the AIV process was adequately implemented. The Board will include a condition requiring hydrostatic testing of the facility if the Board is not satisfied that the AIV method is adequately implemented.

8.2 Environment

This project, being the operation of the existing Alberta System under federal jurisdiction, requires a Certificate under section 52 of the NEB Act. That triggers an environmental assessment under the *Canadian Environmental Assessment Act* (CEA Act). Since the project does not require more than 75 km of new right-of-way, as defined in the CEA Act *Comprehensive Study List Regulations*, the project was subjected to a screening level of environmental assessment under the CEA Act.

Following the oral portion of the hearing, the Board issued a draft Environmental Screening Report (ESR) on 16 January 2009 for public review and comment. The Board received comments from AAPL/CAPLA and reply comments from TransCanada.

The ESR reflects parties' comments and the Board's assessment of the bio-physical and socio-economic effects of the Project and mitigation measures based on the project description, factors to be considered, and the scope of those factors. The ESR also includes recommendations for conditions to be included in any Board regulatory approvals.

Views of the Board

With respect to its regulatory decision under the NEB Act, the Board has considered the CEA Act ESR and the recommendations included therein. The Board determined in the ESR that, with the implementation of *TransCanada's* environmental protection procedures and mitigation measures and the Board's recommendations, the proposed Project is not likely to cause significant adverse environmental effects. The Board will incorporate the recommendations set out in Section 7.5 of the ESR into the Certificate.

Details regarding the Board's assessment of the environmental and socio-economic effects evaluated pursuant the CEA Act are provided in the ESR, included as Appendix III of these Reasons.

Chapter 9

Benefits and Burdens

Views of the Board

The benefits of the continued operation of the Alberta System were set out in TransCanada's application. The Alberta System carries approximately 10 Bcf (283 million m^3) of natural gas per day, comprising 68 percent of Western Canadian natural gas production or 16 percent of North American natural gas production. This gas flows to consumers in Alberta, elsewhere in Canada and in the United States. The Alberta System serves as a vital connection between a substantial portion of the production from the Western Canadian Sedimentary Basin and the rest of the North American natural gas infrastructure. In various submissions, a number of parties commented on how important the Alberta System was to their operations.

The continued operation of the Alberta System allows natural gas produced in Western Canada to reach markets. The system allows natural gas to flow from receipt to delivery points within Alberta, creating a seamless market for use by suppliers and consumers alike. The system connects to a number of pipeline systems leaving Alberta, supplying gas to customers in other parts of Canada and the United States. The substantial benefits of the continued operation accrue locally, regionally within Alberta, nationally within Canada and to international stakeholders. The benefits are also currently being enjoyed by these stakeholders. TransCanada mentioned the possibility of connection to future production and markets, possibly expanding the scope of benefits in the future.

The burdens imposed by the issuance of a Certificate pertain primarily to the interaction between the pipeline and landowners. AAPL/CAPLA indicated that landowners would be impacted by, for example:

- New requirements for landowners to seek TransCanada's permission to move vehicles across the right-of-way;
- Changes to the depth to which a landowner could till the land over the pipeline without seeking permission from TransCanada;
- The wider safety zone under the NEB Act putting more lands under restriction;
- The loss of participant funding for future Alberta System applications under the federal system; and

- Possible liabilities faced by landowners resulting from the NEB losing jurisdiction over pipelines once they have been abandoned.

The first three requirements are designed to increase the safety of pipelines which is paramount to the public interest.

In its application and during the hearing, TransCanada noted that its existing programs responded to a number of the concerns and that it would continue to work with landowners in the future to minimize any impacts. The Board has also imposed a number of conditions and has ongoing regulatory oversight over the operations of the Alberta System. These are designed to ensure all stakeholders receive appropriate consideration in the operation of the system.

The change of jurisdiction that the Board confirmed in Part I of these reasons results in a change in the framework of regulation for the Alberta System. This framework - the legislation, regulations and processes that apply to federal pipelines in Canada - has been designed to balance the rights of all parties as well as ensure the safety of those working and living near pipelines, protect the environment, and benefit Canadians through efficient energy infrastructure and markets. The Board works with companies and stakeholders to ensure these goals are continuously met, throughout the life of the pipelines it regulates.

The Board is of the view that the evidence in this case strongly weighs in favour of granting a Certificate for the continued operation of the Alberta System.

Chapter 10

Tolls and Tariffs

TransCanada stated that it did not seek approval of tolls or a tariff for the Alberta System and that it intends to file the operative tolls and tariff with the Board pursuant to section 60(1)(a) of the NEB Act to be effective upon issuance of the Certificate.

BP Canada supported the issuance of a Certificate as quickly as possible subject to two conditions. The first condition would establish a process for a full tariff review with an application for approval of the Alberta System tariffs or approval of a settlement on a final basis to be filed within six months of the effective date of NEB regulation. The second condition would require TransCanada to file tariffs for the Alberta System on an interim basis by the effective date of the Certificate.

In BP Canada's view conditions setting forth a process and timeline to deal with toll and tariff issues are needed to reduce commercial and regulatory uncertainty during the transition to NEB regulation. In support of its requests, BP Canada referred to uncertainty arising from the diverse interests among affected parties in ongoing discussions concerning changes to the toll design of NGTL and the need to give NEB time to assess Alberta System tariffs in the context of the NEB Act. WEG/Tenaska supported the inclusion of BP Canada's proposed conditions in any Certificate that the Board may decide to issue.

The UCA urged the Board to reject the conditions proposed by BP Canada and defer to future Board panels the toll and tariff matters of the Alberta System. If the Board were to set a timeline for a toll application and interim tolls through the proposed conditions, the Board would give certainty to the timing of an application on the Alberta System tolls at the cost of reducing the flexibility of all affected parties to address the toll redesign of the Alberta System. The Board could potentially cause more problems than those that the proposed conditions are meant to solve.

TransCanada asked the Board not to accept the proposed conditions of BP Canada. In TransCanada's view, accepting these proposed conditions of BP Canada would amount to making determinations on tolls without any substantive evidence and would be contrary to the earlier ruling of the Board that Part IV matters were outside the scope of the current proceeding. In particular, interim tolls would increase the uncertainty surrounding the tolls that shippers may ultimately pay.

Views of the Board

The Board is cognizant of the desire of all parties to reduce uncertainty associated with the tolls and tariffs of the Alberta System during the transition to NEB regulation. Having considered the submissions of BP Canada, WEG/Tenaska, UCA and TransCanada, the Board is of the view

that affected parties should be given the opportunity and the flexibility to address the toll and tariff issues of the Alberta System outside the GH-5-2008 proceeding. In the Board's view, including the two conditions proposed by BP Canada would unnecessarily constrain the manner in which parties may resolve these matters in a timely fashion. The requests of BP Canada for conditions regarding a full toll review and interim tolls are therefore denied.

The Alberta System is a vital link between Canadian gas produced in Western Canada and markets in Canada and the United States. Under normal business circumstances, the Board would expect that Alberta System tolls would be approved by the Board. In the context of the transition to NEB regulation and the need to minimize regulatory uncertainty, the Board will accept the filing of a tariff, including a schedule of tolls pursuant to section 60(1)(a) of the NEB Act to become effective upon the coming into force of the Certificate.

Chapter 11

Disposition

In the decision reported in Part I, the Board ordered that the Alberta System is within Canadian federal jurisdiction and subject to regulation by the Board. Under the CEA Act, the Board has determined that the continued operation of the Alberta System, as proposed by TransCanada and with the recommended mitigation measures, is not likely to cause significant adverse environmental effects.

The Board will issue, subject to approval of the Governor in Council, a Certificate for the continued operation of the Alberta System. The Certificate will be subject to the conditions set out in Part II, Appendix II.

The Board will issue a Leave to Open Order at the same time.

S. Leggett
Presiding Member

K.M. Bateman
Member

G.A. Habib
Member

Calgary, Alberta
February 2009

Part II, Appendix II

Certificate Conditions

General

1. TransCanada Pipelines Limited (TransCanada) shall comply, or cause NOVA Gas Transmission Ltd. to comply, with all of the conditions contained in this Certificate unless the Board otherwise directs.

2. TransCanada shall implement or cause to be implemented all commitments, including the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment, referred to or made by TransCanada in its application or as otherwise agreed to in the GH-5-2008 proceeding or in its related submissions.

Commitments

3. TransCanada shall cause to be implemented all commitments made by TransCanada during the GH-5-2008 proceeding in its application or as otherwise agreed to during questioning in the Alberta System proceeding or in its related submissions.

Emergency Response Exercise

4. Within nine months of the effective date of the certificate TransCanada shall conduct an emergency response exercise involving Alberta System facilities in the northwest quadrant of the province with the objectives of testing the following:

    a) effectiveness of the Emergency Procedures Manual;

    b) training of company personnel;

    c) communications systems and protocols;

    d) coordination of emergency response activities with agencies, first responders and mutual aid partners; and

    e) effectiveness of its liaison and continuing education programs.

5. At least 45 days before the emergency response exercise is scheduled to occur, TransCanada shall advise the Board, in writing, of the date of the exercise, the participants in the exercise and the scenario for the exercise.

6. TransCanada shall file with the Board, within 30 days after completion of the emergency response exercise, a report on the exercise, including:

    a) the results of the exercise; and

b) areas for improvement and the steps to be taken to correct deficiencies.

Consultation

7. TransCanada shall file with the Board, for approval, a description of:

a) the principles and goals established for the Stakeholder Relations Program; and

b) the design of Phase I and Phase II of the Stakeholder Relations Program, including the factors that influenced the design.

8. TransCanada shall file with the Board a summary of the results of Phase I of the Stakeholder Relations Program which should include, but not be limited to:

a) the persons or groups consulted;

b) the methods, dates and locations of consultation activities;

c) the information provided and the means of distributing this information to persons or groups;

d) a summary of the input provided by potentially affected persons or groups;

e) a summary of the responses made regarding the input from potentially affected persons or groups and, for approval, a description of how outstanding concerns will be addressed; and

f) how input from persons or groups has influenced the design, construction or operation of the project.

9. TransCanada shall file with the Board a summary of the results of Phase II of the Stakeholder Relations Program which should include, but not be limited to:

a) the persons or groups consulted;

b) the methods, dates and locations of consultation activities;

c) the information provided and the means of distributing this information to persons or groups;

d) a summary of the input provided by potentially affected persons or groups;

e) a summary of the responses made regarding the input from potentially affected persons or groups and, for approval, a description of how outstanding concerns will be addressed; and

f) how input from persons or groups has influenced the design, construction or operation of the project.

Audit

10. TransCanada shall, within 9 months of the effective date of the certificate, have a third-party auditor conduct an audit of its Alberta System operations to evaluate the implementation and effectiveness of systems to achieve the goals of the *Onshore Pipeline Regulations 1999* and other NEB requirements. Within the time frame specified TransCanada shall:

a) propose the scope of work for the NEB approval within 30 days of this certificate becoming effective;

b) submit the qualification criteria it intends to use to select the third-party auditor prior to the selection of the third-party auditor;

c) facilitate the observation and examination of any part of the process and records by NEB staff by providing an audit schedule and subsequent updates;

d) file with the Board the protocols and the audit report, including results; and

e) create and submit a corrective action plan based on the findings of this audit.

GIS Information

11. Subject to availability, TransCanada shall provide GIS information to the Board for the Alberta System. The format and type of GIS data is to be determined by the Board following the effective date of the certificate.

Engineering Reports

12. Subject to availability , TransCanada shall provide engineering reports associated with the incidents that occurred on the Alberta System during the previous 10 years.

Corporate Confirmation

13. Within one year of the effective date of the certificate, Trans Canada shall file with the Board a confirmation, by an officer of the company, that the Alberta System is in compliance with all applicable conditions of this certificate. If compliance with any of these conditions cannot be confirmed, the officer of the company shall file with the Board details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is an officer of the company.

For Facilities Approved but Not Constructed on Effective Date of Certificate

Manuals

14. TransCanada shall file with the Board for approval, the following programs and manuals within the time specified.

a) Field Joining Program 14 days prior to joining;

b) Field Pressure Testing Program 14 days prior to pressure test; and

c) Construction Safety Manual 14 days prior to construction.

Construction Schedule

15. TransCanada shall, at least 14 days prior to the commencement of construction, file with the Board a detailed construction schedule or schedules identifying major construction activities and shall notify the Board of any modifications to the schedule or schedules as they occur.

Construction Specifications

16. TransCanada shall file with the Board at least 10 days prior to the commencement of construction, TransCanada's final Pipeline Construction Specifications.

Welding Procedures

17. TransCanada shall, during construction, maintain for audit purposes at each construction site:

a) a copy of the welding procedures;

b) the non-destructive testing procedures used on the project; and

c) all supporting documentation related to non-destructive testing.

Permits and Authorizations

18. TransCanada shall file with the Board, 60 days prior to construction, a copy of any permits, letters of advice and authorizations issued by provincial and federal authorities for those facilities and any provincial Codes of Practice, Guidelines or Criteria referred to therein.

19. Where regulatory approvals obtained from provincial regulators specify that the requirements of that approval may be changed by an inspector of that organization, TransCanada shall seek to obtain that approval from an employee of the National Energy Board designated for this purpose. All other changes to approval requirements shall be subject to Board approval.

Environmental Protection Plan

20. TransCanada shall file with the Board for approval, at least 60 days prior to the planned start of construction, updated, project-specific Environmental Protection Plans (EPPs). The EPPs shall be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments or requirements, as set out in TransCanada's applications to provincial and federal regulatory authorities for the projects, subsequent filings, or as otherwise agreed to while obtaining the required regulatory approvals. Any provincial or federal approval conditions or requirements set out in approval documents issued for the facilities shall be included. The EPPs shall describe the criteria for the implementation of all procedures and measures, and shall use clear and unambiguous language that confirms TransCanada's intention to implement all of its commitments and regulatory requirements. Construction shall not commence until TransCanada has received approval of its EPP from the Board.

The EPP shall address, but is not limited to, the following elements:

a) environmental procedures including site-specific plans, criteria for implementation of these procedures, mitigation measures and monitoring applicable to all project phases, and activities;

b) environmental alignment sheets for pipeline projects clearly indicating the location of required mitigation;

c) a reclamation plan which includes a description of the condition to which the applicant intends to reclaim and maintain the right-of-way once the construction has been completed, and a description of measurable goals for reclamation; and

d) evidence of consultation with relevant regulatory authorities that confirms satisfaction of the proposed mitigation.

Construction Reports

21. TransCanada shall file with the Board, on a monthly basis until construction is completed, in a form satisfactory to the Board, construction progress reports. The reports shall include information on the activities carried out during the reporting period, any environmental and safety issues and non-compliances, and the measures undertaken for the resolution of each issue and non-compliance.

Pressure Testing

22. TransCanada shall document the results of its pressure testing program and submit such documentation as part of its Leave to Open application. Further, TransCanada shall, within 24 hours, notify the Board of any leaks or ruptures that occur during pressure testing.

Alternative Integrity Validation

23. If the Board is satisfied with the adequacy and implementation of the alternative integrity validation (AIV) process on the North Central Corridor Loop, it will not require a hydrotest to grant the leave to open application. However, if the Board is not satisfied that TransCanada has demonstrated the adequacy and implementation of the AIV method, the Board may direct TransCanada, either during construction or operation of that section, to comply with the requirements of CSA Z662 and conduct a pressure test on the section.

For Facilities Under Construction on the Effective Date of the Certificate

Application of Certain Conditions to Facilities Under Construction on Effective Date of Certificate

24. Conditions 14 to 22 apply, with such modification as the circumstances require, to facilities under construction on the day that the certificate takes effect. The time for filing documents is modified to require filing as soon as possible following the day upon which the certificate takes effect.

Part II, Appendix III

Environmental Screening Report

National Energy Board | Office national de l'énergie

ENVIRONMENTAL SCREENING REPORT

Pursuant to the *Canadian Environmental Assessment Act* (CEA Act)

Transfer of Jurisdiction of TransCanada's Alberta System to the National Energy Board (NEB)

Applicant Name:	TransCanada PipeLines Limited (TransCanada)		
Application Date:	17 June 2008	**CEA Act Registration Date:**	12 November 2008
National Energy Board (NEB or Board) File Number:	OF-Fac-Gas-T211-2008-01 01	**CEA Registry Number:**	08-01-43755
CEA Act Law List Trigger:	Section 52 of the *National Energy Board Act*	**CEA Act Determination Date:**	17 February 2009

Canada

SCREENING SUMMARY

TransCanada has applied to the NEB for an order declaring the TransCanada Alberta System (the System) to be within federal jurisdiction and subject to regulation by the NEB and for a Certificate of Public Convenience and Necessity pursuant to Section 52 of the *National Energy Board Act* (NEB Act). The System consists of about 23,500 km of natural gas pipelines and associated facilities located within the province of Alberta.

For the purposes of environmental assessment, the Project is defined as the continued operation of the System, albeit under NEB jurisdiction. This includes various routine operations and maintenance activities which are and will continue to be confined to existing rights of way, facility sites and access roads unless otherwise warranted. TransCanada is not proposing the construction of additional facilities or the decommissioning or abandonment of existing facilities as part of its application.

This report represents an Environmental Screening Report (ESR) for the continued operation of the System should the Board decide that it is within federal jurisdiction.

The NEB has considered information provided by TransCanada and the public during its review of the Project. The NEB is of the view that, with the continued implementation of TransCanada's management systems, standard operating programs and environmental protection procedures, and the NEB's recommendations, the transfer of jurisdiction and the continued operation of the existing pipeline System is not likely to cause significant adverse environmental effects.

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1.0 INTRODUCTION

1.1 Application to the NEB

On 17 June 2008 TransCanada applied to the NEB for an order declaring its TransCanada Alberta pipeline system (the System) to be within federal jurisdiction and subject to regulation by the NEB and for a Certificate of Public Convenience and Necessity pursuant to Section 52 of the *National Energy Board Act* (NEB Act).

1.2 Existing Provincial Regulatory Context

TransCanada's existing System is presently regulated under provincial legislation by the Alberta Utilities Commission (AUC). The AUC regulates the physical aspects of the System including approval of facilities, their location, and the safety and reliability of ongoing operations.

Responsibility for provincial environmental requirements is shared among provincial departments: for private land, responsibility lies with Alberta Environment; for Crown land it lies with Alberta Sustainable Resource Development; and through a memorandum of understanding with the AUC, the Energy Resources Conservation Board is responsible for operation and compliance matters for oil and gas facilities in Alberta.

1.3 The System

The System consists of about 23,500 km of varying diameter pipes and associated facilities all located in the province of Alberta. This pipeline network transports natural gas from receipt points to delivery points and to interconnections with interprovincial or international pipelines. The associated above-ground supporting facilities include approximately 50 compressor stations and 1200 meter stations (approximately 1000 receipt points and 200 delivery points). The facility rights of ways range from about 15 m to over 30 m in surveyed width depending on the size of the original pipe diameter and the number of adjacent loops.

The System also includes any facilities that, as of the effective date of any potential Certificate, would already be approved by the AUC and are in various stages of completion.

2.0 ENVIRONMENTAL ASSESSMENT PROCESS

TransCanada's application pursuant to section 52 of the NEB Act triggers the CEA Act *Law List Regulations* thereby requiring the preparation of this Environmental Screening Report (ESR).

No other federal authority was identified as a responsible authority or specialist department under the CEA Act for the purposes of the environmental assessment of this Project.

A Notice of Commencement for the environmental assessment of the Project under the CEA Act was posted on the CEA Registry on 12 November 2008.

The NEB held an oral public hearing on the Project between November 18 and 28, 2008, in Calgary, Alberta. Among the List of Issues included in the Hearing Order was "the potential

environmental and socio-economic effects of the operation of the facilities, including those factors outlined in subsection 16(1) of the CEAA."

Pursuant to paragraph 18(3)(a) of the CEA Act on 22 December 2008 the NEB posted a notice on the CEA Registry indicating how the Scope of the EA could be obtained. The Scope is attached as Appendix 1 at the end of this report.

In accordance with the CEA Act, the NEB has carried out an environmental assessment for the Project and prepared this draft ESR for public comment. As a Responsible Authority under the CEA Act, the NEB will consider any comments received and will then make a decision under subsection 20(1) of the CEA Act.

3.0 DESCRIPTION OF THE PROJECT

For the purposes of environmental assessment, the Project is defined as the continued operation of the System (1.3 above), albeit under NEB jurisdiction.

The Project includes various routine operations and maintenance activities which are, and will continue to be, primarily confined to the existing rights of way, facility sites and access roads. Activities which could potentially interact with the biophysical or socio-economic environment include:

- vegetation and weed management activities along the rights of ways;
- regular aerial surveillance along the rights of ways;
- regular vehicle or machinery traffic to and from above ground facilities for operation and maintenance activities; and
- site-specific repairs and possible excavation of pipeline sections and clean up to pipelines, facilities or rights of ways, whether for replacement of equipment, or as a result of spills, accidents or malfunctions, or as a result of a random physical event (e.g., slope erosion, slump, watercourse erosion).

The Project does not include the construction of additional facilities or the decommissioning or abandonment of existing facilities.

4.0 DESCRIPTION OF THE ENVIRONMENT

The System, because of its extent, intersects almost every natural region in the province of Alberta including the Boreal Forest, Foothills, Parkland and Grassland Natural Regions (Natural Regions and Sub-Regions of Alberta, 1998). Geographically, the System is located in both the Green and White zones of Alberta. The Green zone is primarily crown land and used for recreation (e.g., camping, hunting and fishing) and resource development such as forestry, oil and gas exploration and development and mining. The White zone encompasses the settled area of Alberta and the lands are generally freehold and are primarily used for agricultural production (e.g., cereal crops and cattle grazing). The System operates in various locations where population varies from a few hundred to over one million. The System also traverses numerous watercourses including most of the province's major rivers.

5.0 CONSULTATION

Following receipt of TransCanada's Application, on 18 July 2008 the NEB issued Hearing Order GH-5-2008 describing how parties could participate and have input in the public hearing process with respect to the Project. The Hearing Order was served on various parties with an interest in the Application and TransCanada was also required to publish notices of the hearing in national, local Alberta and Aboriginal newspapers. As noted previously in section 2.0, the NEB's public hearing process included consideration of potential environmental and socio-economic effects of the operation of the facilities including factors under the CEA Act.

The only parties to have raised issues with respect to the physical activities or works associated with TransCanada's Application were the Alberta Association of Pipeline Landowners (AAPL) and the Canadian Alliance of Pipeline Landowner' Associations (CAPLA). On 17 October 2008, AAPL and CAPLA both submitted evidence regarding the negative impacts of the Project for landowners.[1] However, since these concerns are not related to any effects on socio-economic conditions resulting from any new changes to the environment caused by this particular Project or Application, these concerns do not meet the definition of socio-economic effects under the CEA Act and so are not addressed in this ESR. However, they are relevant under the NEB Act, and the Board will address them in its Reasons for Decision document.

5.1 Comments on the Draft ESR

5.1.1 Comments Received by the NEB on the Draft ESR

Following the release of the draft ESR, a letter was received from the AAPL/ CAPLA, in which they submitted that the Alberta System transfer does create environmental effects connected to and resulting in socio-economic impacts. In particular, AAPL/CAPLA submitted that they had presented evidence regarding soil compaction effects of increased restrictions on tillage depth and equipment crossing, as well as environmental effects such as contamination and soil subsidence related to pipeline abandonment.

TransCanada filed comments in response to the comments from AAPL/CAPLA on the Draft ESR. TransCanada submitted that no revision of the Draft ESR is warranted. TransCanada further submitted that the concerns of AAPL/CAPLA do not directly or consequentially result from a change to the biophysical environment caused by the Project nor from a change to the Project caused by the biophysical environment.

5.1.2 The NEB's Response to Comments on the Draft ESR

The Board has determined that the evidence presented during the GH-5-2008 proceeding did not establish that TransCanada's existing practices and programs regarding tillage depth and equipment crossing would change as a result of the continued operation of the Alberta System

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1 The concerns raised included: crossing pipelines with vehicles and mobile equipment; pipeline depth monitoring program; integrity dig procedures; landowner complaints tracking system; new language relating to abandonment for new easement agreements; and an offer of annual compensation for any new facilities.

under federal jurisdiction; therefore, there would be no change to the biophysical environment. As a result, the Board will not revise the screening report.

AAPL/CAPLA's concerns regarding pipeline abandonment would be addressed in a separate TransCanada application to the NEB for this type of activity. Mitigation for issues such as soil contamination and soil subsidence would be presented in the application for abandonment and the NEB would ensure the adequacy of these measures at that time.

6.0 THE NEB'S ENVIRONMENTAL ASSESSMENT METHODOLOGY

In assessing the environmental effects of the Project, the NEB used an issue-based approach. In its analysis in the table in Section 7.1, the NEB identified interactions expected to occur between the Project as defined and the surrounding environmental elements. The table in 7.1 also considers the mitigation measures that would be relied on. Also included in 7.1 are the considerations of potential accidents and malfunctions, and any change to the Project that may be caused by the environment. If there were no interactions expected between the Project and the environment then no further examination was deemed necessary. Similarly, no further examination was deemed necessary for interactions that would result in positive or neutral potential effects. However, included in the assessment would be any potential interactions that are uncertain and any potential effects of uncertain outcome.

Section 7.2 summarizes residual effects and provides further discussion on the approach to mitigation. Section 7.3 addresses cumulative effects. Section 7.4 provides a note on any potential future construction, modification or abandonment of System facilities, and Section 7.5 lists recommendations for any subsequent regulatory approval of the Project.

7.0 ENVIRONMENTAL EFFECTS ANALYSIS

Potential Project interactions with the environment and related mitigations are shown in the Table in section 7.1.

7.1 Project – Environmental Interactions and Mitigation Measures

	Environmental Element	Project Inter-action Y/N/U	Description of Interaction (How, When, Where)	Potential Adverse Environmental Effects and Mitigation
Bio-Physical	Soils and Terrain	Y	Generation of liquid and solid wastes	Waste products will be disposed of in accordance with local and provincial regulations; any materials that can be recycled or reused will be taken to appropriate facilities.
			Random erosion and mass-movement event on existing rights of way	Regular monitoring is designed to predict random erosion and mass-movement events. If such an event occurs, and depending on the issues involved, regulatory authorities would be consulted.
			Air Emissions from Compressor Stations may contribute to Acid Input	The compressor stations are designed and operated in accordance with the requirements of the "Alberta Code of Practice for Compressor and Pumping Stations and Sweet Gas Processing Plants" and TransCanada has committed to meeting these criteria in their Operating Procedures.
			Accident or malfunction event	The System is continuously monitored from TransCanada's Operations Control Center (OCC) to react to accidents or malfunctions. TransCanada also has an Emergency Management System (EMS) to react to incidents. (See s.7.2 for further details.)
	Soils and Terrain (cont'd)	U	Contaminated soils – TransCanada may need to excavate pipeline sections as part of ongoing maintenance and routine monitoring. Most sites can be expected to be in good condition with little potential for contamination. However, there is potential for contamination whenever gas facilities are involved.	Should contaminated soils be discovered during regular maintenance activities, qualified soil contamination assessment and remediation personnel will be on-site during excavation to conduct in-field screening. Any contaminated material will be segregated and stockpiled and hauled away to a licensed facility for treatment and disposal (as per TransCanada's operating procedures). If stockpiled over more than one day or under wet or windy / adverse weather conditions, the stockpiled material would be bermed and covered. Any encountered contamination will be the responsibility of TransCanada.
	Vegetation	Y	Project is on already disturbed sites Vegetation management activities on existing rights of way may impact vegetation, wildlife habitat and interfere with natural succession	Weed-management plans are developed to minimize effects on desirable vegetation. Vegetation-management plans are targeted at specific areas and disturbance is minimized.
	Water Quality and Quantity	Y	Random erosion and mass-movement event on existing rights of way	Regular monitoring is designed to predict random erosion and mass-movement events. If such an event occurs and, depending on the issues involved, regulatory authorities would be consulted.

	Environmental Element	Project Inter-action Y/N/U	Description of Interaction (How, When, Where)	Potential Adverse Environmental Effects and Mitigation
			Accident or malfunction event	The System is continuously monitored by the OCC to react to accidents or malfunctions. TransCanada has an EMS to react to incidents. (See s 7.2 for further details).
	Fish and Fish Habitat	Y	As above	
	Wetlands	Y	As above	
	Wildlife and Wildlife Habitat	Y	Project sites and adjacent areas are already disturbed and therefore there is low potential for species at risk. Operational and maintenance activities might cause sensory disturbances. Vegetation-management activities on existing rights of way may disrupt habitat. Intermittent facility blow downs might cause sensory disturbance. Long term sensory disturbance surrounding compressor stations.	The System is in place and operating and is not expected to cause additional new sensory disturbances. Vegetation-management plans are targeted at specific areas and disturbance is minimized. TransCanada's Operating Procedures ensures that activities are carried out in a manner that prevents and mitigates for potential effects. The compressor stations are designed and operated in accordance with the requirements as noted above.
	Federal and Provincial Species at Risk or of Special Status	N	No construction or activity.	N/A
	Air Quality	Y	Emissions from ongoing operation of pipelines would be negligible. However, Compressor Stations will produce ongoing air emissions, and maintenance and inspection procedures during operations may require venting to the atmosphere. This could include potential release of hydrogen sulphide (H_2S), and mercaptans from the CO_2 stream.	The compressor stations are designed and operated in accordance with the requirements as noted above. All system venting includes the use of an incinerator or chemical absorber to remove H_2S and mercaptans before release to the atmosphere. TransCanada's HSE management system is designed to detect, prevent and mitigate any potential environmental effects.

	Environmental Element	Project Inter-action Y/N/U	Description of Interaction (How, When, Where)	Potential Adverse Environmental Effects and Mitigation
Socio-Economic	Human Occupancy and Resource Use	N	No construction or activity	N/A
	Heritage Resources	N	No construction or activity	N/A
	Traditional Land & Resource Use	N	No construction or activity	N/A
	Socio-cultural Well-being	N	No construction or activity	N/A
	Human Health and Aesthetics	Y	Air emissions may potentially affect human health	See Air Quality above for a review of mitigation
			Generation of wastes	See Soils and Terrain above for a review of mitigation
			Facility blowdowns may cause sensory disturbance	Blowdowns are conducted in accordance with established procedures
Other	Accidents Malfunctions	U		Accidents and malfunctions can result in a range of potential effects including any of those considered above.
			Spills	TransCanada's Spill Contingency Plan sets out the measures to be taken in the event of a spill of fuel, oil or other nonhazardous or hazardous material which may occur during operation of the pipeline system.
			Human error and equipment failure	The System is continuously monitored by the OCC to react to accidents or malfunctions and TransCanada has an EMS to react to incidents. TransCanada also has an Emergency Response Plan Manual and an Operations Manual that provides contingency and emergency response plans to address any accidental events and malfunctions for the existing System (See s 7.2 for further details)
	Effects of the Environment on the Project	U	Potential for physical or weather events which may effect the operation of the System; including random erosion and mass-movement events on existing rights of way – see also Soils & Terrain, and Water Quality & Quantity	Can cause damage to System facilities resulting in accidents and malfunctions (see above)

Legend: Y (Yes); N (No); U (Uncertain); N/A (Not applicable)

7.2 Elaboration of Residual Effects and Mitigation Measures

Given the nature of this Application and the Project as defined, the NEB did not seek a detailed listing of specific mitigation measures, but rather, the assessment should demonstrate that TransCanada has in place an adequate management system and environmental protection program to ensure proper environmental protection.

From the Table in section 7.1 the more predictable residual effects can be summarized as:

- the maintenance of altered vegetation species and succession patterns on some portions of the System (rights of way on agricultural lands are typically reseeded with agronomic species and returned to agricultural land use)
- some sensory disturbances to wildlife or nearby residents primarily from monitoring and maintenance activities; and
- minor air emissions and sensory disturbance from operation of compressor stations.

These residual effects are anticipated to be of negligible to low magnitude and localized.

Further details with respect to TransCanada's mitigation measures for minimizing these effects, as well as addressing other effects not relevant to this assessment, are presented in its manuals and operating procedures, which formed part of its application and are in accordance with the NEB's *Onshore Pipeline Regulations* (OPR-1999). Through the NEB's OPR-1999 companies, including TransCanada, are expected to have an Environmental Protection Program that anticipates, prevents, mitigates and manages conditions which have a potential to adversely affect the environment. Programs should include documented procedures, training programs, internal audits, record management practices, and performance measures, among other elements.

In addition the NEB would recommend (see Section 7.5), in the event TransCanada's Application is approved, that TransCanada have a third-party auditor conduct an audit of its operations to evaluate the implementation and effectiveness of systems to achieve the goals of the OPR-1999 and any other NEB requirements.

More uncertain interactions with potential residual effects would be those associated with accidents or malfunctions, including from the effects of any severe environmental events such as random erosion or mass movement events.

The ongoing operation of TransCanada's Alberta System facilities, as well as TransCanada's existing NEB-regulated pipelines, are all controlled from TransCanada's OCC in Calgary, Alberta. The OCC is staffed 24 hours per day and uses a computer-based supervisory control and data acquisition (SCADA) system to continuously monitor and control pipeline operations. This includes continuous monitoring for leaks using CSA Z662-96 – Oil and Gas Pipeline Systems as a guideline. In the event of a suspected leak or specific alarm event, the OCC will use the SCADA system to turn off facilities, control pressure valves and remotely close automated block valves along the System. Field staff is then dispatched to investigate the leak, secure the location and ultimately conduct any necessary repairs and site clean-up.

Further, TransCanada maintains a comprehensive Emergency Management System (EMS) to provide for effective emergency preparedness planning and response. This EMS includes:

- the development of site-specific emergency response plans;
- provision for escalation of response, up to and including, the utilization of a central emergency response organization to supplement regional and site personnel;
- notification matrices for internal and external reporting;
- training, including scheduled table-top and field exercises;
- documentation and record keeping requirements; and
- coordination with other emergency response agencies to ensure appropriate communications, understanding, and cooperation procedures are in place so that company emergency plans are compatible with those of other affected agencies.

The NEB would recommend TransCanada have an updated Emergency Response Manual on file with the NEB should the NEB decide to issue a certificate to TransCanada for the System.

Based on all of the above the NEB finds that its regulatory oversight combined with TransCanada's management system and operating procedures would mitigate any potential adverse environmental effects associated with the continued operation of the System.

7.3 Cumulative Effects

The assessment of cumulative effects entails considering the impacts of Project residual effects in combination with residual effects from other projects or activities, within the appropriate ecological contexts and spatial and temporal scales.

This Project, as defined, concerns the ongoing operation of TransCanada's extensive Alberta pipeline System, much of which has been in place for several decades. The appropriate corresponding spatial scale would therefore be province-wide within which numerous other developments over the same time frame have resulted in a landscape that is largely inhabited and subject to multiple human activities (e.g., agricultural, residential, industrial, resource extraction, or recreation).

The Project related residual effects identified in 7.2 have in the past and will continue to interact with similar corresponding residual effects resulting from other province wide past developments and ongoing activities. However the scale of vegetation clearing, sensory disturbance, air emissions and noise from other activities is, on scale, substantially greater than that from the continued operation of an existing pipeline network. Moreover, the Board finds that the Project represents the most efficient method of shipping natural gas as the infrastructure is already in place.

With respect to those cumulative effects attributable to the residual effects from the continuing operation of the TransCanada Alberta System, the effects are minor or negligible, within regulatory requirements, and are deemed acceptable.

7.4 Construction, Modifications or Abandonment of Facilities

For any addition to or modifications of the System, or at the end of the service life of any of the System facilities, an application would be required. Such applications would be pursuant to the NEB Act under either section 58 or 52 for construction or modifications, or pursuant to paragraph 74(1)(d) for abandonment. At the time any such application is made, it would also require an environmental assessment of that proposal under both the NEB Act and the CEA Act.

7.5 Recommendations

It is recommended that, in any Certificate that the NEB may grant, the following conditions be required:

(1) TransCanada shall implement or cause to be implemented all commitments, including the policies, practices, programs, mitigation measures, recommendations and procedures for the protection of the environment, referred to or made by TransCanada in its application or as otherwise agreed to in the GH-5-2008 proceeding or in its related submissions.

(2) TransCanada shall, within 9 months of the effective date of certification, have a third-party auditor conduct an audit of its TCAS operations to evaluate the implementation and effectiveness of systems to achieve the goals of the *Onshore Pipeline Regulations 1999* and other NEB requirements. Within the time frame specified TransCanada shall:
   a) propose the scope of work for NEB approval within 30 days of this certificate becoming effective;
   b) submit the qualification criteria it intends to use to select the third-party auditor prior to the selection of the third-party auditor;
   c) facilitate the observation and examination of any part of the process and records by NEB staff by providing an audit schedule and subsequent updates;
   d) file with the Board the protocols and the audit report, including results; and
   e) create and submit a corrective action plan based on the findings of this audit.

8.0 THE NEB'S CONCLUSION

The NEB is of the view that, with the continued implementation of TransCanada's management systems, standard operating programs and procedures, and the NEB's recommendations, the transfer of jurisdiction and the continued operation of the existing pipeline System is not likely to cause significant adverse environmental effects.

9.0 NEB CONTACT

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APPENDIX 1: Scope of the Environmental Assessment

TransCanada PipeLines Limited

Proposed Transfer of Jurisdiction of TransCanada's Alberta System to the NEB

Scope of the Environmental Assessment Pursuant to the

Canadian Environmental Assessment Act

1.0 INTRODUCTION

On 17 June 2008 TransCanada PipeLines Limited (TransCanada) applied to the National Energy Board (NEB) for an order declaring its TransCanada Alberta pipeline system (the System) to be within federal jurisdiction and subject to regulation by the NEB and for a Certificate of Public Convenience and Necessity pursuant to Section 52 of the *National Energy Board Act* (NEB Act). The continued operation of the System should the Board decide that it is within federal jurisdiction is subject to an environmental assessment (EA) under the *Canadian Environmental Assessment Act* (CEA Act). The NEB is the Federal Environment Assessment Coordinator for this Project.

The System consists of about 23,500 km of varying diameter pipe and associated facilities all located in the province of Alberta. This pipeline network transports natural gas from receipt points to delivery points and to interconnections with interprovincial or international pipelines. The associated above-ground supporting facilities include approximately 50 compressor stations and 1200 meter stations (approximately 1000 receipt points and 200 delivery points). The facility rights of ways range from about 15 m to over 30 m in surveyed width depending on the size of the original pipe diameter and the number of adjacent loops.

The System also includes any facilities that, as of the effective date of any potential Certificate, would already be approved by the AUC and are in various stages of completion.

2.0 SCOPE OF THE ASSESSMENT

2.1 Scope of the Project

For the purposes of environmental assessment, the Project is defined as the continued operation of the System, albeit under NEB jurisdiction.

The Project includes various routine operations and maintenance activities which are, and will continue to be, primarily confined to the existing rights of way, facility sites and access roads. Activities which could potentially interact with the biophysical or socio-economic environment include:

- vegetation and weed management activities along the rights of ways;
- regular aerial surveillance along the rights of ways;

- regular vehicle or machinery traffic to and from above ground facilities for operation and maintenance activities; and
- site-specific repairs and possible excavation of pipeline sections and clean up to pipelines, facilities or rights of ways, whether for replacement of equipment, or as a result of spills, accidents or malfunctions, or as a result of a random physical event (e.g., slope erosion, slump, watercourse erosion).

The Project does not include the construction of additional facilities or the decommissioning or abandonment of existing facilities.

2.2 Factors to be considered

The EA will include a consideration of the following factors listed in paragraphs 16(1) (a) to (d) of the CEA Act:

(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
(b) the significance of the effects referred to in paragraph (a);
(c) comments from the public that are received during the environmental assessment process; and
(d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project.

For further clarity, subsection 2(1) of the CEA Act defines 'environmental effect' as:

(a) any change that the project may cause in the environment, including any change that the project may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species as defined in the *Species at Risk Act*;
(b) any effect of any change referred to in paragraph (a) on
    i. health and socio economic conditions,
    ii. physical and cultural heritage,
    iii. the current use of lands and resources for traditional purposes by aboriginal persons,
    iv. any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance; or
(c) any change to the project that may be caused by the environment,
whether any such change or effect occurs within or outside Canada.

2.3 Scope of the Factors to be Considered

The EA will consider the potential effects of the proposed transfer of jurisdiction within spatial and temporal boundaries within which the System may potentially interact with, and have an effect on components of the environment. These boundaries will vary with the issues and factors considered, and will include but not be limited to:

- construction, operation and site reclamation, as well as any other undertakings proposed by the Proponent or that are likely to be carried out in relation to the physical works proposed by the Proponent, including mitigation and habitat replacement measures;
- seasonal or other natural variations of a population or ecological component;
- any sensitive life cycle phases of species (e.g., wildlife, vegetation) in relation to the timing of activities associated with the Project;
- the time required for an ecological component to recover from an effect and return to a pre-effect condition, including the estimated degree of recovery;
- the area within which a population or ecological component functions; and
- the area affected by the Project.

For the purpose of the assessment of the cumulative environmental effects, the consideration of other projects or activities that have been or will be carried out will be limited to those for which formal plans or applications have been made.